

Principles of incorporation

GENERAL OVERARCHING PRINCIPLES

- The Trading Operations of Jersey Harbours and Jersey Airport are incorporating to provide commercial freedom to operate. Government will be at arms length, with the primary link being via a Shareholder and Board MOU.
- The Ports of Jersey Limited (POJL) will operating within the legal and regulatory environment determined by Government, following due process
- The Board of Directors of POJL will become responsible for the operation of the Harbours and Airport.
- The outcome will follow the same broad principles as the incorporations of JT and Jersey Post, with the direction founded in P.70
- POJL will be treated as any other regulated utility in Jersey, including Ministerial direction and guidance following due process
- Property and assets are to be transferred pursuant to P.70 without additional encumbrances, and generally will be as open as today for public access unless closed or limited for a specific purpose (eg safety, security and pollution)
- Certain government functions which may not be normally considered the remit of a Port or Airport Authority will be entrusted to the Board as Public Service Obligations (eg International obligations (such as CICZ, port state control, sea rescue, pollution response outside of port waters), maintenance and operation of historic harbours, and certain elements of sea transport regulation)

A. COMPANY/COMMERCIAL

1. Ports of Jersey Limited

- 1.1 Ports of Jersey will be a commercial entity and it is expected that it will seek to act commercially in the interest of its shareholders, except where it is specifically limited in doing so.
- 1.2 The objectives of the company will be clearly identified in the incorporation law, the Memorandum and Articles of Association, and the Shareholder memorandum of understanding, in similar terms.
- 1.3 As an incorporated entity, PoJL will be subject to Jersey financial, commercial and employment law, including but not limited to the Companies (Jersey) Law 1991, the Competition (Jersey) Law 2005, Employment (Jersey) Law 2003 and the Health and Safety at Work (Jersey) Law 1989.
- 1.4 Ports of Jersey Limited will be limited by shares, 100% of these shares will be held by the States of Jersey or its representative.
- 1.5 The shareholder will be the appointed by the Treasury and Resources Minister (“TRM”). The shareholder relationship will be as usually exists in a limited company with the shareholder holding the Board to account for the day to day management of the company, to include the setting of strategic direction, holding the executive to account and ensuring there is proper stewardship of the company’s assets.
- 1.6 Political responsibility for matter concerning the shareholding will fall to the TRM.
- 1.7 The shareholder will need the approval of the States Assembly to sell any shares, wind up the company or create news shares.

- 1.8 A dividend may be paid annually to the shareholder, as agreed between the company and the shareholder.
- 1.9 POJL will be subject to the same taxation levels as other utilities in Jersey.
- 1.10 A memorandum of understanding (MOU) will be agreed between the company and the shareholder.
- 1.11 That MOU will make provision for the development of a Strategic Business Plan (SBP) (or similar document) which will include details of hypothecation and disposal of assets planned for the next year (see A 2.2). For certainty the requirement for an SBP will be a function of the MOU and will not appear in legislation.
- 1.12 Variations to the SBP will be governed by the shareholder MOU (see A 2.2)
- 1.13 Ports of Jersey Limited will be governed by a board.
- 1.14 The first chairman of the post-incorporation board will be appointed by either the Economic Development Minister or the TRM, to be agreed between those Ministers.
- 1.15 The Ports of Jersey Limited will support the States of Jersey by fulfilling certain governmental responsibilities as detailed in the Public Service Obligation (see C 1).
- 1.16 The law will make provision that the duties of the Harbours and Airport Authorities fall in their entirety upon the PoJL to provide whilst it is the Harbours and Airport Authority.

2. Assets

- 2.1 Ports of Jersey Limited will acquire ownership of a defined package of property and land assets, including assets currently held by the Crown. This package is to be subject to agreement between the Public and the PoJ.
- 2.2 These property assets will be transferred with a provision in law that they cannot be sold or hypothecated against unless with the permission of the TRM, representing the Public. The approval of a Strategic Business Plan or variation thereof by the shareholder in due course may be considered to be an approval for the sale or hypothecation of these assets (see a 1.10). This will function as long as the TRM remains responsible for both the shareholding and the Public's property portfolio. If either of these functions pass from the TRM to another party this relationship must be varied to avoid the PoJ 'serving two masters'.
- 2.2a The concerns of the Law Officers' Department in respect of a conflict of interest on behalf of the TRM in relation to section A2.2 have been noted, but the prevailing opinion at this time is that these concerns exist also in respect of other incorporations and the situation has been adequately managed in those cases.
- 2.3 This transfer of ownership is subject to negotiation with the Crown in respect of the ownership of seabed and foreshore, and will by necessity include caveats required to satisfy the Crown in respect of the transfer of Crown assets to the Public.
- 2.4 No duty or taxation will be payable on that transfer.
- 2.5 This transfer will comprise, at the date of incorporation, at least the main commercial port, the airport, Gorey pier and associated land and assets. The transfer of further assets which form part of the agreed transfer programme will continue post-incorporation. On

completion of the transfer programme, Ports of Jersey Limited will own the assets required for its operations, and all of the outlying harbours and various other sites.

- 2.6 This transfer will not include 'beach' (as commonly understood) within the outlying harbours.
- 2.7 The Public (represented by a Minister) will retain powers of compulsory purchase, which he will exercise on behalf of the company as agreed. Land or property compulsory purchased by the Public for this purpose will be transferred into the ownership of the company without duty or taxation.
- 2.8 The Public will retain as a function of the conveyancing process such rights of way over the assets transferred for the maintenance and improvement of retained assets and all infrastructure as may be considered reasonable. PoJ may not unreasonably restrict such access. For the avoidance of doubt, it is not here the intention to create any general rights for the installation of utilities that the various utility laws do not already provide for in respect of private property.
- 2.9 There may be legacy sub-commercial arrangements exist which benefit PoJ's customers. Further consideration must be given to the disposition of these agreements. The general principle is that PoJ will continue supporting facilities which serve the broader maritime or aviation interest, particularly those already in existence, as a function of its corporate social responsibilities. Governmental support may be considered for new or non-maritime/aviation purposes.
- 2.10 Where PoJL may reasonably require rights to the use of or access over retained Public assets, those rights will be ascribed to the company in a satisfactory manner.
- 2.11 Future disposal will be governed by the MOU and may in certain circumstances be subject to States Assembly approval.
- 2.12 The company will pay rates to the relevant parish for its property assets.
- 2.13 Arrangements will be sought between PoJL and the relevant parishes to allow the continued policing of the parking arrangements in the transferred areas. EDD will seek to establish this in law as necessary once agreements are reached.
- 2.14 Significant asset disposals (i.e those disposals of such magnitude or public interest as to generally fall outside of the expectations of the Public) must be notified to the States Assembly in advance of transfer being completed. This will be a function of the MOU.
- 2.15 Protection will exist in law against disposal or hypothecation of a limited set of core assets, including the airport runway and essential port facilities. If permission can be given for such disposal or hypothecation, it will be by decision of the Assembly.

3. Employees

- 3.1 The service of transferred employees will be considered to be continuous over the incorporation.
- 3.2 The terms and conditions of employees will be protected at the point of transfer.
- 3.3 There will be no probation period for transferring employees.
- 3.4 Performance standards and code of conduct will be those of the incorporated entity
- 3.5 There will be no redundancies as a result of incorporation.

- 3.6 Employees who choose not to transfer to PoJL will be deemed to have resigned.
- 3.7 Trade Unions will be recognised by the PoJL.
- 3.8 Employee Information will be transferred to the PoJL.
- 3.9 Human resources policies and procedures will be materially the same as the policies and procedures of the States of Jersey at the time of transfer. PoJ will need to 'freeze' policies at some point pre-incorporation, in order to enable good communications with employees.

4. Economic Regulation of Ports of Jersey Limited

- 4.1 The company will be regulated by the Jersey Competition Regulatory Authority (part of the Channel Islands Competition and Regulatory Authorities).
- 4.2 The provisions for this regulation will appear in the legislation, which will create a sector-specific regulatory environment.
- 4.3 The company will have a right to operate the air and sea ports conferred by licence issued by the JCRA, which may contain conditions.
- 4.4 The company will be in practice the sole operator of air and sea ports in Jersey for the foreseeable future. However, the company will not hold a perpetual monopoly on such operations, and the Regulator will retain the right to issue licences for that purpose to other parties. Such further issue is not currently anticipated.
- 4.5 The licence will be granted by the JCRA, and will be liable to withdrawal by the JCRA following due process. Conditions will be subject to modification, review, removal or other change by the JCRA. The JCRA will also be entitled to levy financial penalties or impose special conditions for breaches of the conditions, or failure to comply with directions of the regulator.
- 4.6 Other licences may be granted to the operators by the JCRA as necessary, subject to the conditions above.
- 4.7 The JCRA will have the capacity to issue binding directions in respect of licence conditions following due process and consultation. These will be enforceable by civil proceedings.
- 4.8 The company will pay for the regulation of the market through licence fees.
- 4.9 The Economic Development Minister will have the power to give guidance to the JCRA in respect of the regulation of the air and sea ports. The EDM will also have the power to direct the JCRA in certain specific circumstances, in keeping with his powers in respect of other regulated entities.
- 4.10 The legislation will preclude the abuse of market power by the company.
- 4.11 The requirement for a licence to be held to operate air and sea ports can be suspended by the Economic Development Minister in extremis,
- 4.12 Post incorporation, the company will maintain a level of transparency in its policy and procedures satisfactory to the regulator.
- 4.13 Charges and dues raised by the company will be transparent, published and open to challenge by the JCRA

- 4.14 Any cross-subsidy between the ports will be transparent and open, and will be subject to the consideration of the JCRA. The need for the cross-subsidy to exist, and for account to be taken of it by the JCRA in its regulation of Ports of Jersey Limited, will be set out in a direction by the Minister upon incorporation.

B. OPERATIONS/AUTHORITIES

1. Harbour Authority, Harbour Master

- 1.1 There will be a Harbour Authority, which will be responsible, by virtue of its existence, for, *inter alia* the maintenance, operation, management and improvement of harbours (but not conservancy of historic elements, although it is acknowledged that the PSO of PoJL contains conservancy provisions), (see C 1.7), repair and maintenance of aids to navigation within harbours and their approaches (C 1.3 iii).
- 1.2 The Harbour Authority will be Ports of Jersey Limited, but no requirement is made in future that it must be Ports of Jersey.
- 1.3 There will be a Harbour Master, with powers described in law. The Harbour Master and any Assistant Harbour Masters will continue to be sworn in as officers with enforcement powers. Specifically, the Harbour Master will continue to have responsibility for policing, operational control, and the enforcement of safety and security of the harbours of Jersey.
- 1.4 The Harbour Master will not be the Chief Executive of POJL but will need a right of access to CEO and Board. He/she will have a duty to carry out those (a) matters delegated to him by the Harbour Authority, and (b) duties assigned to him by law and (c) such other matters as the Minister may direct through the Harbour Authority.
- 1.4a In the event that the Harbour Master or Harbour Authority takes an action as directed by government, the government will be responsible for any liabilities arising from such actions.
- 1.4b Where the Economic Development Minister retains the power to direct that action be carried out, this direction will be to the Harbour Authority, not directly to the Harbour Master or his Assistants. This does not preclude the Harbour Master or his/her Assistants carrying out actions as directed without delay, and the Harbour Authority be legally required as necessary to transmit instructions to the Harbour Master in a timely and effective manner, particularly in the case of emergency.
- 1.5 The Harbour Authority may delegate its responsibilities to the Harbour Master and others.
- 1.6 In general, powers relating to the Ports of Jersey will be granted to the Harbour Authority, except where precedent exists for those powers to be exercised by the Harbour Master as an individual, in which case they will be granted to the Harbour Master. Examples of this precedent appear in Section 52 of the United Kingdom's Harbours, Docks and Piers Clauses Act 1847.
- 1.7 The Minister is the Local Lighthouse Authority (LLA) and the Statutory Harbour Authority (SHA), but he will appoint PoJL (as Harbour Authority) as LLA and SHA.

2. Airport Authority, Accountable Manager

- 2.0 The situation of the aviation side is different from that of maritime, primarily due to the greater level of international integration in policies and procedure, most notably represented by the existence of the Director of Civil Aviation. This simplifies the incorporation process considerably in this area, hence the principles have little reference to aviation. The general presumption, where the situation allows, is that the principles as agreed in respect

of maritime will apply equally to aviation. Most notable here is the intention to empower the Accountable Manager in the same manner as the Harbour Master.

- 2.1 There will be an Airport Authority, which will be responsible, by virtue of its existence, for certain things that will be agreed separately.
- 2.2 The Airport Authority will be Ports of Jersey Limited, but no requirement is made in future that it must be Ports of Jersey.
- 2.2a There will be an Accountable Manager, and the powers and responsibilities of that role will be described in law. The Accountable Manager and any deputies appointed will be sworn in as an officer with enforcement powers. Specifically, the Accountable Manager should continue to have responsibility for policing, operational control, and the enforcement of safety and security of the airport of Jersey.
- 2.2b The Accountable Manager will not be the Chief Executive of POJL but will need a right of access to CEO and Board. He will have a duty to carry out those (a) matters delegated to him by the Harbour Authority, and (b) duties assigned to him by law and (c) such other matters as the Minister may directly entrust.
- 2.3 The Airport Authority may delegate its responsibilities to the Accountable Manager and others.

3. Regulation of safety, pollution prevention and security

- 3.1 The regulation of maritime safety, pollution prevention and security will be a matter for EDD to manage as it sees fit, through whatever structure the Minister decides. It is anticipated that the duty holder for the maritime administration of Jersey will be the Registrar of Shipping (RoS). Some duties will be assigned directly to the RoS and some will be retained by the Minister to conduct or delegate as he sees fit.
- 3.1a For the avoidance of doubt, it is not the intention in section B 3.1 above to create any new powers or to increase the scope of regulation. The references above only refer to the regulation of maritime safety, the prevention of maritime pollution and maritime security, to agreed international standards, and subject to due process and consultation.
- 3.2 Current MOUs, related agreements and audit arrangements between EDD and the PoJ will be outlined in law, with detail to be agreed between parties.
- 3.3 Maritime safety, pollution prevention and security policy will be a matter for the maritime administration.
- 3.4 Aviation safety and security will be managed by the Director of Civil Aviation.
- 3.5 Aviation safety and security policy will be a matter for Minister of External Relations.

4. Management and benefit of moorings

- 4.1 There is no intention to create a monopoly provider of moorings in Jersey.
- 4.2 A definition of which mooring are and are not to be charged for is proving difficult. Nevertheless, in principle a definition will be developed which allows PoJL to charge for and makes it responsible for maintaining moorings which are within harbours or which benefit significantly from the presence of PoJL owned assets.
- 4.3 Neither ownership boundaries nor 'harbour limits' provide a satisfactory definition in this case.

- 4.4 Notwithstanding that certain moorings are not maintained or charged for by PoJL, the Harbour Master will retain the necessary rights and powers to ensure that such moorings do not interfere with the safety of navigation.

C. OBLIGATIONS/GOVERNMENT

1. Public Service Obligation

- 1.1 PoJL will be responsible for certain activities on behalf of government. These will be treated as outsourced functions and must be conducted to the satisfaction of the government pursuant to the PSO agreement
- 1.2 The fundamentals of the PSO will exist in law. Details will be agreed by the Economic Development Minister or his appointed representative. The detail of the PSO will be a binding duty on the company.
- 1.3 The Maritime Regulatory PSO requirements will be outlined in law much in the terms that follow. The detail of management will be agreed between parties. The law outlining the Maritime Regulatory PSO requirements will be amendable by Order of the Economic Development Minister, such Order being made only after consultation with the Treasury and Resources Minister by dint of his political responsibility for the shareholding. The Economic Development Minister's Order making power will be limited in its capacity to introduce new requirements. Maritime Regulatory PSOs currently identified are-
- i. Coastguard operations and reporting functions including certain related operational Receiver of Wreck duties.
 - ii. Hydrography.
 - iii. Maintenance of General Aids to Navigation in territorial waters except those referred to in section B 1.1.
 - iv. Enforcement of shipping legislation within territorial waters.
 - v. Limited Port State Control.
- 1.4 The Maritime Regulatory PSO requirements will be conducted to a standard agreed by the EDM, or whatever delegate appointed or structure is developed, with points iv and v in particular being shared with the Maritime Compliance Manager and other government agencies as required.
- 1.5 The Aviation Regulatory PSO requirements will be outlined in law much in the terms that follow. The detail of management will be agreed between parties. The law outlining the Aviation Regulatory PSO requirements will be amendable by Order of the Minister for External Relations, such Order being made only after consultation with the Treasury and Resources Minister by dint of his political responsibility for the shareholding. Aviation Regulatory PSOs currently identified are-
- i. Provision of air traffic services for the Channel Islands Control Zone, fulfilling the States of Jersey's obligations arising from the Memorandum of Understanding between the United Kingdom and French Government.
- 1.6 The Aviation Regulatory PSO requirements will be conducted to the satisfaction of the MER, or whatever delegate appointed or structure developed.
- 1.7 There will be a duty of conservancy over the outlying harbours, which will be conducted pursuant to obligations contained in the PSO agreement,

- 1.8 The requirements, outcomes and manner in which these services are provided will be a matter for the government. The efficiency of operations in these areas will be a matter for the JCRA.
- 1.9 The PSO should clearly define the expected outcomes and manner in which they are to be accomplished.
- 1.10 PoJL will assess the cost of the PSO (subject to oversight by the JCRA).
- 1.11 The PSO will contain a general assumption that access by the general public to the outlying harbours (and parts thereof) will be permitted, and that access to those harbours will not be unreasonably withheld. PoJL may reasonably withhold access for the purpose of complying with legislation in force, for reasons of safety and security, and to meet the needs of reasonable operational requirements.
- 1.12 If necessary, an external arbiter will be appointed to make a determination on the narrow issue of the 'reasonableness' of any closure of or restriction of access to an outlying harbour or part thereof. For the avoidance of doubt, an arbiter will consider that actions taken as required by other legislation will be reasonable.
- 1.13 Closure, restriction of access or the imposition of conditions or limitations on access will be notified to the government before they are imposed, except in the case of emergency.
- 1.14 If access to any part of an outlying harbour is restricted or conditioned in emergency, PoJL will bring this to the attention of the government as soon as possible.

2. Sea Transport Policy

- 2.1 The legal and policy framework relating to the management of seaborne external transport links should continue post incorporation as they exist pre-incorporation.
- 2.2 The market scope of services currently covered by the policy consists of passenger car ferry services.
- 2.3 The market scope may increase to cover freight as a result of work being conducted by Jersey and Guernsey on a possible long term deal with a ferry operator. This would involve a change to policy not a change to law.
- 2.4 The Incorporation Law should provide the flexibility to require regulation of "lifeline services" by the JCRA in the future. This should not be automatic but capable of activation by the Minister at a future point if a better outcome for consumers is more likely to be achieved than under continued States' light touch regulation, taking account of the costs of the alternative forms of regulation. The States will be able to make regulations to specify that certain services are "lifeline services" with respect to the Ports of Jersey.
- 2.5 Administering sea transport policy (lifeline services) for the island will be one of the public interest things that a Harbour Authority is required to do.
- 2.6 There will be appropriate means for involving the Minister where an action is brought by or against the Harbour Authority in respect of its responsibilities for island sea transport policy.
- 2.7 Where the Harbour Authority is administering the permit regime on behalf of the Minister it would be protected from liability unless of course it had acted negligently.
- 2.8 EDD will lead on prosecutions related to island policy permit breaches with the Attorney General. There will be nothing to prevent PoJ from being proactive in collecting evidence

and making a complaint to EDD, asking that EDD considers sending a file to the Attorney General.

- 2.9 Consideration will be given to whether the Sea Transport Policy requirements will be expressed or duplicated within the PSO.

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