

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE AND STATES' TRADING SUPERVISORY BOARD

STATES' TRADING SUPERVISORY BOARD – SUCCESSION PLANNING

The States are asked to decide:-

Whether, after consideration of the policy letter 'States' Trading Supervisory Board – Succession Planning' dated 20 January, 2020, they are of the opinion:-

1. To agree that the Rules of Procedure of the States of Deliberation and Their Committees should be amended with immediate effect as follows –

(a) for Rule 16.(6), substitute:

"16. (6) On a proposition to elect members of a Committee (other than members of the States' Trading Supervisory Board who are not sitting members of the States), the Presiding Officer shall first invite the President of the Committee concerned, and thereafter other Members, to propose eligible candidates. Candidates must be proposed and seconded. Nobody shall speak about a candidate at that stage; and if no more candidates are proposed and seconded than there are vacancies the Presiding Officer shall put the election of the candidate(s) to the vote without speeches. If there are more candidates than vacancies the Presiding Officer shall invite each proposer to speak, for not more than three minutes in respect of each candidate proposed by that person; and each candidate to speak, for not more than three minutes, before voting takes place. No other member shall be entitled to speak.",

(b) immediately after Rule 16.(6) insert the following paragraph :

"(7) On a Proposition to elect members of the States' Trading Supervisory Board who are not sitting Members of the States, the President of the States' Trading Supervisory Board shall have the exclusive right to propose eligible candidates and the Presiding Officer shall invite the President of the States' Trading Supervisory Board and no other Member to propose eligible candidates (who must then be seconded) and to speak, for not more than three minutes in respect of each such candidate. The Presiding Officer shall thereafter put the election of the candidate(s) to the vote without further speeches.",

(c) re-number existing paragraph (7) of Rule 16 as paragraph (8), and

(d) for Rule 37.(1), substitute:

“37. (1) The term of office of all Presidents and members of all Committees (excluding members of the States’ Trading Supervisory Board who are not sitting members of the States) shall expire at the end of a States’ term. Where an office is required to be filled by a sitting Member of the States the said office shall be deemed to have been vacated upon the office holder ceasing to be a sitting Member of the States.

(2) The term of office for members of the States’ Trading Supervisory Board, who are not sitting members of the States, shall expire at the end of the December of any year in which the end of a States' term occurs.”,

(e) re-number existing paragraphs (2) to (7) of Rule 37 as paragraphs (3) to (8),

(f) in Rule 46.(3), for "37(3)" substitute "37(4)".

2. To direct the States’ Trading Supervisory Board to report back to the States no later than the 16th December 2020 States’ Meeting with its proposals to either retain or replace one or both of its Non-States’ Members.
3. To direct the States’ Trading Supervisory Board, subject to the States’ approval of the proposed changes to the Rules and the resultant establishment of the principle to extend the terms of office for the STSB’s Non-States’ Members, to report back to the States no later than the 26th May 2021 States’ Meeting with its longer term succession planning proposals for the STSB beyond 2020. These could include a limit on the number of terms served by an individual Non-States’ Member (as is the practice of the incorporated entities) and/or varying the periods of office to stagger the appointment cycle, thereby reducing the possibility that all members of the Board would be required to stand down in close succession in the future.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE AND STATES' TRADING SUPERVISORY BOARD

STATES' TRADING SUPERVISORY BOARD – SUCCESSION PLANNING

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

20 January, 2020

Dear Sir

1 Executive Summary

- 1.1 The purpose of this policy letter is to make recommendations to the States regarding the succession planning arrangements for the States' Trading Supervisory Board (STSB) over the 2020 election period and at the start of each new political term.
- 1.2 The proposals outlined below are intended to ensure a degree of continuity for the STSB as it acts as if it were a Board of Directors for the States' unincorporated trading concerns and commercial interests, thereby helping to assure their efficient management, operation and maintenance during the pertinent period.

2 Background

- 2.1 The STSB was established as an entirely new Committee of the States in May, 2016.
- 2.2 At the outset of the 2016-2020 political term, the Rules of Procedure of the States of Deliberation and Their Committees (the Rules) provided that the minimum requirements for the membership of the STSB should include: a President who shall be a sitting member of the States; at least one other sitting Member of the States; and, at least two other Members who shall not be sitting Members of the States.
- 2.3 The specific inclusion of Non-States' Members in the membership requirements had been predicated on the need to ensure that the STSB was able to recruit

the appropriate skills and experience required to fulfil its role as shareholder of the incorporated trading assets and, in overseeing them, to ensure the efficient management, operation and maintenance of the unincorporated businesses. In the case of the latter, the STSB would effectively act as the Board of Directors for those businesses. The expectation was that those members who were not States' Members would have skills in connection with corporate governance, board and shareholder responsibilities, risk management, operational efficiency and performance review and have a commercial, legal and/or financial background. In contrast to the Non-States' Members appointed to Principal Committees, the Non-States' Members of the STSB would be voting members of the Board.

- 2.4 Following consideration of a policy letter from the Policy & Resources Committee (P&RC) in September, 2016¹, the States subsequently agreed that the number of Non-States' Members included in the composition of the STSB should be two. This decision was based on a recommendation from the P&RC which had been determined following a review of the correct skills mix that would be required of the political and non-political STSB members.
- 2.5 The States also agreed to appoint Mr Stuart Falla MBE and Mr John Hollis to the Non-States' Member positions. At that time, Mr Falla and Mr Hollis completed the membership of the STSB alongside the two States' Members.
- 2.6 Subsequently, the membership of the STSB was increased following the States' approval of a Requête in July, 2018², which resulted in an amendment to the Rules to increase the number of States' Members to two in addition to the President.
- 2.7 As a result of the above decisions, the composition of the STSB currently includes three States' Members and two Non-States' Members.
- 2.8 Under the current Rules, the terms of office of all five members of the STSB will expire at the end of the current political term.

3 Terms of Office - Context for Change

- 3.1 Since its inception, the STSB has kept under regular review and development the arrangements around its governance to ensure that it can fulfil its mandate effectively and meet the expectations that were set out in the former States' Review Committee's (SRC) policy letters on the organisation of the States'

¹ Billet d'État XXIII of 2016 – Policy & Resources Committee – Constitution and Membership of the States' Trading Supervisory Board

² Billet d'État XIX of 2018 – Requête – Amendment to the Constitution of the States' Trading Supervisory Board

affairs.

- 3.2 The SRC's policy letter of July, 2015³, drew a distinction between the role of the STSB in respect of the incorporated and unincorporated trading assets. The former are made up of Guernsey Electricity, Guernsey Post, the Aurigny Group and Jamesco 750 Limited and, in their case, the STSB's role is to act as shareholder. The latter include Guernsey Ports, States Works, Guernsey Dairy, Guernsey Waste and Guernsey Water and the SRC's policy letter clearly envisaged that the STSB's role here would be to act as if it was the Board of Directors and this is how the STSB has approached its work. The P&RC and the STSB consider that herein lies a clear distinction between the role of the STSB and that of the Principal Committees, the mandates for which are more clearly focused on delivering their respective operational functions and advising on, developing and implementing the policies and duties within their remit.
- 3.3 A particular focus of the STSB has been on ensuring that effective succession planning arrangements are in place for its businesses, both incorporated and unincorporated, at Board and management level. Good succession planning is recognised widely in corporate governance codes as a key contributor to the long term-success of businesses: helping to maintain a degree of continuity that ensures the effective ongoing operation of the business and the delivery of its strategy.
- 3.4 As such, the STSB has worked with the incorporated businesses to ensure that succession planning arrangements have been put in place for their respective Boards of Directors. However, in the case of the unincorporated businesses where the STSB itself acts as the Board of Directors, the political cycle means that it is unable to provide similar succession planning arrangements.
- 3.5 In the context of the above, the P&RC and the STSB consider that, in a good corporate environment, it would be almost unimaginable that a business would consciously allow its entire Board of Directors to step down simultaneously as this scenario would present significant risks to its successful operation. However, as it presently stands, this is what will happen following the 2020 General Election.

4 Proposal for Change

- 4.1 The P&RC and the STSB have reviewed the potential opportunities which might be available to mitigate the risks set out in section 3 above.
- 4.2 Both the Committee and the Board acknowledge that it is unavoidable that the

³ Billet d'État XII of 2015 – States' Review Committee – The Organisation of States' Affairs – Second Policy Letter

terms of office for the States' Members of the STSB will end with the political term. However, they consider that this need not be the case for the Non-States' Members.

4.3 With this in mind, the P&RC and the STSB are proposing a change to the Rules to extend the terms of office of the STSB's Non-States' Members for a short period beyond the end of the 2016-2020 political term and, at most, no later than 31st December, 2020. This approach would enable the following:

- a degree of continuity in the Board to be maintained as the States moves from one political term to the next and the STSB awaits the election of its States' Members;
- an opportunity for the newly elected States' Members of the STSB to then review the Board's required skills mix and determine whether the existing Non-States' Members help to fulfil that or whether the time is right to refresh that part of its membership with new Non-States' Members; and,
- in the event that new Non-States' Members are deemed as being required, time to undertake a transparent and public recruitment process for these positions (noting that the existing Non-States' Members were appointed after such a process).

Having undertaken such a review, the STSB would be required to report back to the States no later than the December States' Meeting following the General Election with its proposals to either retain or replace one or both Non-States' Members.

4.4 Under the current Rules, it is the President, P&RC, who has the exclusive right to propose the election of Non-States' Members of the STSB. The arrangements proposed above envisage that this right should in future rest with the President, STSB, either by proposing the retention of the existing Non-States' Members or the appointment of new ones. This is because any nominations put forward would be determined following an analysis by the STSB of the skills' mix needed by the Board and, where new Non-States' Members are deemed as being necessary, an open recruitment process. Consequently, the STSB would be best placed to make recommendations to the States, rather than the P&RC. This could be achieved through a change to the Rules and would be consistent with the arrangements in relation to the Principal Committees, which are responsible for the recruitment and nomination of their own Non-States' Members.

4.6 The proposed change to the current nominations process would also be

consistent with the 2018 revisions to the Rules⁴ that enabled the President, STSB to nominate States' Members for appointment to the Board. It would also help to reinforce that the STSB is accountable to the States, not the P&RC.

- 4.7 It is stressed that, should a change to the Rules as set out in paragraph 4.4 above be agreed, the ultimate authority to approve or reject the proposals regarding Non-States' Member appointments would remain with the States' Assembly.
- 4.8 In proposing the above amendments to the Rules, the P&RC and the STSB are cognisant of the fact that the revised arrangements would create a period between the end of the current political term and the election of a new President and political Board members to the STSB, during which the Board's membership would be comprised solely of Non-States' Members. However, in accordance with Rule 40(4), which provides that '*The members forming the quorum of the States' Trading Supervisory Board shall include at least 2 members who are members of the States*', the Non-States' Members comprising the STSB during this period would not, in the absence of political membership, be able to make any decisions pertaining to matters which fell within the Board's mandate.
- 4.9 Should the STSB be required to make an urgent decision during the period it is inquorate, the Board, like any other States' Committee/Board, would be constituted as per the provisions of Rule 40 (7), which provides that when a Committee is inquorate, the insufficiency of members shall be replaced by member/s of the States chosen in the following order: members of the P&RC according to their length of service in the States; Presidents of Principal Committees according to their length or service in the States; Presidents of other Committees according to their lengths of service in the States; and other Members according to their length of service in the States.
- 4.10 The amendments proposed by the P&RC and the STSB are not intended to alter the arrangements set out in paragraph 4.9. They are to ensure that the STSB will continue to be able to utilise the experience and knowledge of the Non-States' Members to provide advice, guidance and support to the unincorporated trading companies over the election period and until such a time as the STSB is again fully constituted and has had the opportunity to review its skills' mix and, if required, undertake a recruitment process for new Non-States' Members.
- 4.11 It is noted that the Board's two existing Non-States' Members, Mr Falla and Mr Hollis, have confirmed that, should the States agree to the above-mentioned amendments to the Rules, they would be willing to continue as members of the STSB for a short period beyond the 2020 General Election to provide a degree

⁴ Billet d'État XIX of 2018 – Requête – Amendment to the Constitution of the States' Trading Supervisory Board

of continuity in accordance with the provisions of paragraph 4.3 above.

- 4.12 The Committee and Board have also given consideration to the longer term succession planning arrangements for the STSB beyond 2020. It is noted that, subject to the States' approval of the proposed changes to the Rules and the resultant establishment of the principle to extend the terms of office for the STSB's Non-States' Members, the STSB will review the long term arrangements and report back to the States with associated proposals. It is envisaged that these arrangements could include a limit on the number of terms served by an individual Non-States' Member (as is the practice of the incorporated entities) and/or varying the periods of office to stagger the appointment cycle, thereby reducing the possibility that all members of the Board would be required to stand down simultaneously in the future.

5 Changes to Rules of Procedure

- 5.1 In order to effect these changes, the following amendments are required to the Rules of Procedure of the States of Deliberation and Their Committees.
- 5.2 To facilitate the extension of the terms of office for Members of the STSB who are not sitting Members of the States to the December following a General Election, it is proposed: to amend existing Rule 37.(1) so that it reads as indicated below; to insert a new paragraph ((2)) of Rule 37 (also see below); and, to make a number of consequential changes to the numbering of existing Rules:

*37. (1) The term of office of all Presidents and ~~all the~~ members of all Committees **(excluding members of the States' Trading Supervisory Board who are not sitting members of the States)** shall expire at the end of a States' term. Where an office is required to be filled by a sitting Member of the States the said office shall be deemed to have been vacated upon the office holder ceasing to be a sitting Member of the States.*

37. (2) The term of office for members of the States' Trading Supervisory Board who are not sitting members of the States shall expire by the end of the December of any year in which the end of a States' term occurs.

- 5.3 To transfer the responsibility for proposing candidates to be members of the STSB who are not sitting Members of the States from the P&RC to the STSB, it is proposed: to amend existing Rule 16.(6), so that it reads as indicated below; to insert a new paragraph ((7)) immediately after paragraph (6) of Rule 16 (also see below); and, to renumber the existing, subsequent paragraphs accordingly:

16. (6) On a proposition to elect members of a Committee (other than members of the States' Trading Supervisory Board who are not sitting members of the States), the Presiding Officer shall first invite the President of the Committee

concerned, and thereafter other Members, to propose eligible candidates. ~~On a proposition to elect members of the States' Trading Supervisory Board who are not sitting members of the States, the President of the Policy & Resources Committee shall have the exclusive right to propose eligible candidates and the Presiding Officer shall invite the President of the Policy & Resources Committee and no other Member to propose eligible candidates.~~ Candidates must be proposed and seconded. Nobody shall speak about a candidate at that stage; and if no more candidates are proposed and seconded than there are vacancies the Presiding Officer shall put the election of the candidate(s) to the vote without speeches. If there are more candidates than vacancies the Presiding Officer shall invite each proposer to speak, for not more than three minutes in respect of each candidate proposed by that person; and each candidate to speak, for not more than three minutes, before voting takes place. No other member shall be entitled to speak.

16.(7) On a Proposition to elect members of the States' Trading Supervisory Board who are not sitting Members of the States, the President of the States' Trading Supervisory Board shall have the exclusive right to propose eligible candidates and the Presiding Officer shall invite the President of the States' Trading Supervisory Board and no other Member to propose eligible candidates (who must then be seconded) and to speak, for not more than three minutes in respect of each such candidate. The Presiding Officer shall thereafter put the election of the candidate(s) to the vote without further speeches.

6 Compliance with Rule 4

- 6.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 6.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.
- 6.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the P&RC and the STSB.
- 6.4 In accordance with Rule 4(5), the Propositions relate to the duties of the STSB to ensure the efficient management, operation and maintenance of any States' unincorporated trading concerns and commercial interests which the States have resolved to include in the mandate of the Board.

Yours faithfully

G A St Pier
President, P&RC

L S Trott
Vice-President, P&RC

A H Brouard
Member, P&RC

J P Le Tocq
Member, P&RC

T J Stephens
Member, P&RC

P T R Ferbrache
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J C S F Smithies
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J Kuttelwascher
Member, STSB

S J Falla MBE
Non-States Member, STSB

J C Hollis
Non-States Member, STSB