
From: Wood, Alasdair
Sent: 22 October 2004 14:21
To: 'graeme.bissett@
Cc: Fitchie, Andrew
Subject: TEL - Memo & Arts

Graeme

Please find attached, revised Memorandum and Articles for TEL. We have kept amendments to the Council's draft to a minimum in order for these to remain as non-contentious to all parties as possible. These Memo and Arts are very much the bare bones of TEL, focussing of TEL's activities will be more effectively achieved through separate agreements between the parties. Such agreements will, in particular, have to include provisions to:-

- establish route to integration
- establish lines of control over TEL
- entrench rights of tie/LB and TD as non shareholders
- deal with issues arising from TEL's eventual LB shareholding and TD Golden share.

As TEL is 100% owned by CEC, they will ultimately have absolute control and will be able to change the Memo and Arts at any time, therefore it must always be borne in mind that nothing provided for in the articles is entrenched without further agreement. I comment on the Memo and Arts and our revisions thereto as follows:

MEMORANDUM

- The Memo is drafted very widely. Note in particular 3.25 which incorporates the statutory powers of a general commercial company, effectively allowing TEL to do anything. As Stated above the focussing of TEL's functions will best be achieved by separate agreement. The commercial scope for any such agreement has yet to be developed.
- 3.1(d) is refined to extend the stated objects of TEL to projects relevant to a local transport strategy
- 3.3 is refined to reflect role of the "operational model" in connection to tram infrastructure etc.

ARTICLES

- 2. I have added provision for the removal of Regulation 91 of Table A - Now the chairman of the board is only appointed by CEC, the directors have no power to do so. (Note: Chairman has a casting vote).
- 2. Deletion on page 2 means that standard position is reverted to, i.e. Chairman cannot determine own eligibility to vote. This was an unnecessary provision as all can vote so long as interest declared.
- 3.1. Deleted because not all authorised share capital is issued and CEC is to be sole shareholder for duration accordingly the directors should not have a general authority to allot unissued share capital. This means that any allotment of further shares has to be authorised by shareholder resolution by CEC.
- 6.2. Deleted so that if in future allotment by directors is authorised, then there is no final provision allowing directors to issue shares to 3rd parties. Therefore protecting CEC control
- 7. Maximum directors at 8 as per your email. Minimum set at 3 to mirror quorum provision.
- 11.1. Allows Council to appoint and remove chairman, representative and the 2 NXDs
- 11.2 to 11.5. Drafted to allow direct appointment by tie and Operators of their directors (LBx2, tiex1, TDx1). This process is better from tie and the operators point of view as avoids CEC intervention in their choice of appointment.
- NB: The position of the directors appointed by the operators and tie is not entrenched by the articles. The Council retains control and as sole member can Alter the Articles and therefore change these rights at will. The Council can also use s303 of the companies act to remove any director by ordinary resolution.
- 11.6. Directors authorised to make disclosure to appointer.
- 12 - Quorum revised to match new definitions. This quorum proposed by CEC provides a strong incentive to ensure attendance at board meetings by all parties, as non attendance will effectively result in decisions being taken by CEC. The alternative proposed by Brodies for a quorum to require a representative of each party carries a high risk of any party causing deadlock through non attendance.

- 13. Deleted, this provision would prove difficult in practice due to difficulty in identification of exclusive tram/bus issues.
- 14. Drafted to clarify that indemnity is only in relation to office as Director of TEL

If you have any comments or questions on the Memo and Arts please do not hesitate to contact me.

Kind regards.

Alasdair

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