



AUDIT ST HELENA
External Auditors

Policy paper to the **Social & Community Development Committee**

In respect of the **St Helena National Trust**

Regarding a **Proposal for regulating due process for the appointment of the Trust's external auditor**

This paper outlines the case for introducing a new regulatory provision by the Governor in Council under section 14(1)(f) of the National Trust Ordinance for the better carrying out of the provisions in section 15(4) regarding the appointment of the external auditor to the Trust.

What is the issue?

Legislative amendments were made to the St Helena National Trust Ordinance by Ordinance 3 of 2019 which became effective 23 March 2019. Section 15(4) now provides that the accounts of the Trust should be audited by the Chief Auditor, or an auditor approved by the Chief Auditor, as follows:

Financial provisions

15. (4) The accounts of the Trust must be audited annually by the Chief Auditor of the St Helena Government, or by an auditor approved by the Chief Auditor, and the members, employees and officers of the Trust or Trust Council must grant to the Chief Auditor or approved auditor access to all the books, documents, cash and securities of the Trust and, on request, all information that is within their knowledge in relation to the operation of the Trust.

A problem arose in the administration of the appointment process for 2018/19 which caused significant delay in the appointment of the external auditor. The Chief Auditor was re-appointed on 16 August 2019 being some 4 months after the year to which the audit relates. The consequence of the delay was that the Trust was unable to report audited accounts to an AGM by the required statutory reporting date of 30 September 2019 as required under section 18(1) of the Ordinance.

The auditor has a responsibility to the membership of an entity to report the results of their independent examination – whether the members are shareholders in a company or ordinary members in the case of the St Helena National Trust. From a governance perspective it is

most desirable for the auditor be appointed by the membership albeit on a motion put by the Council to the members for resolution.

Equally from a governance perspective it is highly desirable for an entity to have an auditor appointed at the AGM for that year. In the absence of timely appointment the auditor is unable to engage with the entity on the transactions occurring in the year to which he is responsible. Moreover were a financial irregularity to arise there would be no appointed auditor for any member to refer.

If there is any desire to change the incumbent auditor this will need to be planned well in advance of the year to which the audit relates so that the necessary consultation and due diligence can be applied. A resolution proposing a change can then be put to the membership at the AGM on a timely and orderly basis.

What is the solution?

The Trust has the new power to appoint an auditor under section 15(4). What is required then is a regulation to require the provision in section 15(4) to be put into effect in an orderly way allowing for an auditor to be:

- (i) duly appointed in the year of account being audited and
- (ii) for the auditor appointment to be put to a vote of ordinary members.

Indeed that is what already happens under the St Helena Companies Ordinance in section 137 when shareholders of a public company at the AGM to appoint or reappoint the auditor for the following year:

137. (1) The shareholders of a public company must, by ordinary resolution at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

And for further reference that is also what the National Trust for England has enacted within the National Trust Act 1971 in section 22:

22. Once at least in every year the accounts of the National Trust shall be examined and audited by an auditor or auditors to be elected annually at the annual general meeting and any previously elected auditor or auditors shall be eligible for re-election.

In St Helena the Governor in Council may make regulations under section 14(1)(f) of the National Trust Ordinance generally for the better carrying out of the provisions of the Ordinance. The Chief Auditor has recommended to the Trust Council that the following new Regulation is inserted at Regulation 7 which would read as follows:

7. (13) The members must, by ordinary resolution at each annual general meeting, appoint an auditor to hold office until the close of the next annual meeting.

This effect of the proposed Regulation 7(13) would be to ensure the orderly application of the new power in section 15(4) requiring the auditor to be appointed in-year at the AGM and by a resolution put to vote by the members of the Trust. In doing so the Trust will always have a named auditor without gap or uncertainty or untimely appointments being made, the arrangements for any transition between auditors can be orderly, the current auditor will sign-off at the AGM before the new auditor is appointed.

The appointment decision is made by the membership rather than management or the executive which will ensure the auditor has the mandate of the membership, and the risk of an untimely and inappropriate audit appointment made by management is also avoided.

What is the way forward?

The Chief Auditor put the above proposal to the Trust Council to introduce the required regulation for consideration by Governor in Council. The matter was first put to the Trust's own Regulation Review Sub-Committee in May 2019 and then again more formally in an audit recommendation to the Trust Council in November 2019. The Trust Council have declined the proposal and disappointingly the regulation was not contained in the draft St Helena National Trust (Amendment) Regulations which were endorsed by the Social and Community Development Committee on 9 December 2019.

The draft Regulations are due to be considered by Governor in Council at the ExCo meeting scheduled for 21 January 2019. In that respect the Chief Auditor herewith makes an urgent proposal for an additional amendment to these Regulations to be considered by SCDC such that the provision may be considered by ExCo alongside the other Regulations and become effective in time for the Trust AGM scheduled to be held on 27 January 2020.

Recommendation

The SCDC endorses an amendment to the St Helena National Trust (Amendment) Regulations to establish an orderly procedure for the appointment of the auditor under section 15(4).

The Attorney General will advise on the precise wording of the required amendment but the proposed revision to the current draft regulations will be along the following lines:

6. Regulation 7 of the principal Regulations is amended -

(a) [...]

(b) by adding the following sub-regulation:

(13) The members must, by ordinary resolution at each annual general meeting, appoint an auditor to hold office until the close of the next annual meeting.

Upon the endorsement of the SCDC the Governor in Council then approves the amended Regulations under section 14(1)(f) of the National Trust Ordinance.

Phil Sharman
Chief Auditor for St Helena

13 January 2020