



ST HELENA

A BILL

FOR

AN ORDINANCE

to amend the Enterprise St Helena Ordinance, 1994, to provide for the appointment of fit and proper persons to serve as Directors, to prohibit the appointment of persons ineligible to serve as Directors; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

Short title, commencement and interpretation

1. (1) This Ordinance may be cited as the Enterprise St Helena (Amendment) Ordinance, 2020, and comes into force on a date or dates fixed by the Governor by Order.

(2) An order under subsection (1) may—

- (a)* appoint different dates for different provisions or for different purposes of the same provision; and
- (b)* contain such transitional or consequential provisions as appear to the Governor to be necessary or convenient.

(3) In this Ordinance “the principal Ordinance” means the Enterprise St Helena Ordinance, 1994.

Amendment of section 4 - Board of Directors

2. Section 4 of the principal Ordinance is amended as follows—

(a) in subsection (1)—

- (i)* by inserting before the words “appointed by the Governor” the words “who must be fit and proper persons and who must be”;
- (ii)* by inserting after the words “appointed by the Governor” the words “by Notice published in the Gazette”; and
- (iii)* by inserting after the words “exceeding 3 years” the words “which may be extended for two further terms of 3 years at a time but not exceeding a maximum of 9 consecutive years”;

(b) by inserting after subsection (1) the following subsections—

“(1A) In determining for the purposes of this Ordinance whether a person is a fit and proper person, regard shall be had to all circumstances, including that person’s—

- (a) honesty integrity and good reputation;
- (b) competence and capability;
- (c) financial soundness;
- (d) probity, and soundness of judgment for fulfilling the responsibilities of that position; and
- (e) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position.

(1B) Without prejudice to the generality of section (1) regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person—

- (a) subject to any law in force making provision for the rehabilitation of offenders in St. Helena is convicted of an offence involving fraud or other dishonesty or violence;
- (b) has contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice;
- (c) has engaged in any business practices appearing to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on that person’s method of conducting business; or
- (d) has engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.”;

(c) by repealing subsection (4) and substituting the following subsection—

“(4) A Director may at any time, in writing to the Chief Executive for Economic Development, resign from office and the resignation takes effect on the date specified in the resignation or on the date upon which the resignation is received by the office of the Chief Executive for Economic Development.”;

(d) in subsection (5) by deleting the words “for disability, neglect of duty or misconduct” and substituting the words “if the person is no longer considered by the Governor to be a fit and proper person to hold office”.

(e) by repealing subsection (6) and substituting the following subsection—

“(6) A Director ceases to hold office if—

- (a) the Director resigns in accordance with subsection (4);
- (b) the appointment of the Director is revoked by the Governor under subsection (5);
- (c) the Director fails to attend fifty percent of the meetings of the Board held in one calendar year without the leave of the Chairperson; or

- (d) the Director is adjudged bankrupt or enters into a composition or arrangement with creditors.”; and
- (f) by inserting after subsection (6) the following subsection—

“(7) It is the responsibility of the Board to ensure that relevant policies are in place to effectively and efficiently manage Enterprise St Helena.”.

Insertion of section 4A - Ineligibility to be appointed as Director

4. The principal Ordinance is amended by inserting after section 4 the following section—

“Ineligibility to be appointed as Director

4A. A person is ineligible to be appointed to act as a Director if the person—

- (a) is less than 18 years of age;
- (b) is not a fit and proper person to be appointed in accordance with section 4(1)(a); or
- (c) was previously appointed by the Governor and that appointment was revoked.”.

Amendment of section 6 - Powers of the Enterprise St Helena

5. The principal Ordinance is amended in subsection 7(2) as follows—
- (a) in paragraph (a)(ii) by deleting the words “appearing to the Board to have facilities” and substituting the word “to”;
- (b) in paragraph (b) by deleting the words “undertaking or managing” and substituting the words “encouraging and enabling sustainable”; and
- (c) by repealing paragraph (d).

Amendment of section 11 - Policy

6. The principal Ordinance is amended in section 11 (4) by—
- (a) inserting after the words “must not lend” the words “or grant funding”; and
- (b) by repealing the words “grant of the loan” and substituting the words “approval of the loan or grant”.

Amendment of section 12 - Meetings of the Board

7. The principal Ordinance is amended in section 12 (2) by—
- (a) deleting the word “or” at the end of paragraph (a);
- (b) by deleting the full stop at the end of paragraph (b) and substituting the words “; or”; and
- (c) by inserting after paragraph (b) the following paragraph—
- “(c) in the absence of the Chief Executive for Economic Development receives a request from Senior Managers.”.

Amendment of section 13 - Disclosure of interests by Directors

7. The principal Ordinance is amended by repealing section 14 and substituting the following section—

“Disclosure of interests by Directors

14. (1) A Director who is in attendance at a meeting and who is directly interested in a matter which is to be or is being considered by the Board must immediately declare the interest of the Director in the matter and withdraw from the meeting and take no part in either the discussion or the decision of the Board in respect of the matter.

(2) The particulars of a declaration of interest made pursuant to subsection (1) must be recorded in the minutes of the meeting at which the declaration is made.

(3) A Director who fails to comply with or contravenes subsection (1) commits an offence.

Penalty: A fine of £10,000.”.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

This Bill would amend the Enterprise St Helena Ordinance, 1994, to provide for the appointment of a fit and proper person to serve as a Director of Enterprise St Helena and refine the responsibilities of the Board. The Bill would also specify the criteria which would make a person ineligible to be appointed as a Director and would remove the necessity for a Director to declare an indirect interest in a matter being considered by the Board.