

Review of the Falkland Islands Development Corporation: final proposals

1. Summary

- 1.1 This document provides the final agreed changes to the Falkland Islands' Development Corporation following decisions made by Executive Council at its 25 August 2011 meeting. These are that Corporation is retained but with a new Governance structure which should enable a more strategic relationship with Government with a more independent and meritocratic Board able to add greater value to economic development and business growth.

2. Next action

- 2.1 That the Attorney General in consultation with the Chief Executive draft suitable legislation in line with agreed proposals for consultation before the close of 2011 and enactment early in 2012.

3 Financial Implications summary

- 3.1 None specific to this report.

4. Background

- 4.1 The Chief Executive was first tasked with a review of the Development Corporation in 2008. However the progress of the review was successively delayed due firstly to the protracted recruitment of a new General Manager and then by the proximity of a general election in 2009. The review proceeded from April 2010 with a period of formative consultation in which observations and ideas were sought from stakeholders.

- 4.2 The terms of reference for the review are contained in Appendix One.

- 4.3 Following this formative consultation the Chief Executive drafted proposals which reflected the consultation, which took account of approaches elsewhere and which put things in an appropriate Falkland Islands context.

- 4.4 These proposals were agreed by Executive Council at its February 2011 meeting for the purposes of consultation and can be summarised as:

“

- On balance FIDC be retained as a quasi autonomous non governmental organisation;
- A more strategic and enabling relationship with Government should be provided for by defining the relationship more closely via a number of strategic and monitoring documents and removing the power of Government to generally direct the Corporation;
- Reserve powers be retained by Government to enable some inevitable flexing of plans in response to external circumstances
- The Board's role should be defined more closely to focus it on the strategic level;
- Board members including the Chair and Vice Chair should all be appointed for a fixed term of three years by Executive Council on merit following an open and objective process. Job descriptions and Person Specifications should be developed;
- One MLA and the Chief Executive to remain as ordinary Board members
- The General Manager should be re-defined as Managing Director and be appointed by the Board, subject to the approval of Executive Council. They could be non voting members of the Board.”

(Executive Council February 2011)

4.5 The Chief Executive has consulted on these proposals with the Board of FIDC, the Rural Business Association, Falkland Islands Fisheries Association and the Chamber of Commerce.

5. Summary of consultation

5.1 Executive Council was given copied of all consultation responses. At a high level the consultation can be summarised, with reference to the key questions in the review, as:

Is there a role for the public sector beyond setting the strategic and policy framework?

It was proposed that there were a number of roles for the public sector including business advice, training, international promotion including trade and investment, financial support, non-commercial projects and economic analysis and policy development

These roles were widely supported in the consultation.

Should FIDC exist as a quasi/independent entity, or be absorbed in to Government?

It was proposed on balance that FIDC should remain as a quasi independent entity.

This was widely supported by the consultation.

Aims and functions

It was proposed that the role of FIDC should be framed broadly, to enable latitude to focus on the priorities of the day, as: “To ensure that essential economic development activities are undertaken to achieve the current strategy.”

This was widely supported by the consultation, but it was asked that it should be clarified whether FIDC also had a social remit. The issue was also raised as to whether the Corporation should have a specific duty to promote businesses owned by Falkland Islanders.

Relationship with Government

It was proposed that the relationship should be more strategic with Government limiting its involvement with FIDC to strategic direction via agreement to three year business plans and the annual budget subventions. FIDC would be required to work in achievement of the Economic Development Strategy and to submit annual progress reports including budget monitoring reports to Government.

It was further proposed that Government would lose the power to generally direct FIDC, but would retain reserve powers to seek and to agree any significant changes to the agreed business plan and annual budget subvention (utilising a financial threshold, e.g. £100k).

These proposals were widely supported by the consultation, however it was felt that the suggested threshold for budget variations was too low. A % variation was suggested as an alternative.

It was also felt that the General Manager/Managing Director should be accountable only to the Board of FIDC and not to the Government Chief Executive (as Executive Vice Chair of FIDC) as at

present, since this relationship resulted in the General Manager in effect working under Government direction and the Board feeling disempowered.

Composition of the Board

It was proposed that the Board consist of three members including the Chair and Vice Chair appointed on merit for a fixed term of three years following an open public appointments process whereby anyone in the community could apply to be on the board and would be assessed against a job description/person specification by Executive Council (possibly on the recommendation of an appointments panel).

It was further proposed that a Member of the Legislative Assembly and the Government Chief Executive would remain on the Board as ordinary members or possibly as non voting members, and that the Financial Secretary would retain the right of attendance. Also that the General Manager could be re-designated as the Managing Director and appointed by the Board subject to confirmation by Executive Council, retaining Board membership but possibly on a non-voting basis.

Finally it was proposed that clearer guidance or rules on conflict of interest be provided and that Executive Council might retain the power to remove directors in exceptional circumstances.

These proposals occasioned the most discussion at consultation meetings. There was support for the idea of 'appointment on merit' but concern that some key sectors could end up not being represented on the Board at all which was felt to be unacceptable. It was suggested that larger Board may be more sensible to ensure quoracy and that perhaps a co-option facility could be provided to ensure all sectors were represented.

There was also concern as to whether the appointments process would be objective and independent, with support given to the idea of an independent Public Appointments Panel undertaking the task of recruitment/appointment with final recommendations to Executive Council.

6. Final proposals

6.1 Taking in to account the points made in consultation the following is recommended to Executive Council as the basis for more detailed drafting work, which will then be presented to Executive Council for approval prior to a further round of consultation on these details.

Retention of FIDC and with a broad purpose

6.2 FIDC should be retained as a quasi autonomous government funded body.

6.3 The suggestion that economic development could be undertaken by a Government department, whilst perfectly feasible and probably the most common approach elsewhere, is not recommended. This is on balance because the government already plays a very large role in the economy and because an autonomous body is more likely to be able to straddle the public and private sectors effectively and have a more entrepreneurial culture.

6.4 The formal purpose of FIDC should be defined in broad terms in a new Ordinance, allowing the Board sufficient scope and enabling it to endure as priorities and circumstances change. However if Government control over FIDC is to be reduced this purpose should be more focused than the current one.

6.5 The current purpose is:

“The Corporation shall-

- (a) encourage and assist in the economic development of the Falkland Islands;*
- (b) advise the Falkland Islands Government on the development of all sectors of business in, or associated with, the Falkland Islands, including tourism, fisheries and any other existing or proposed area of economic activity;*
- (c) advise the Falkland Islands Government on rural development, in particular the growth of business including agriculture in Camp, and the improvement of quality of life in Camp;*
- (d) advise the Falkland Islands Government on government expenditure in agriculture;*
- (e) advise the Falkland Islands Government on such other matters relating to the economic development of the Falkland Islands as the Government may refer to the Corporation or as the Corporation may consider fit; and*
- (f) examine and advise upon proposals referred to the Corporation by the Executive Council relating to the imposition or revision of tariffs, taxes, duties, quotas or other protective or developmental measures.”*

(FIDC Ordinance 1983 as amended Ordinance 20/00)

6.6 It is recommended that the new purpose, being less broad than the above but providing sufficient leeway for the Board be as follows:

‘Advise on and implement the Government’s economic strategies and take what further steps are required to ensure the successful development of businesses and a positive business environment in the Falkland Islands’.

6.7 It should be noted that his formulation does not include any specific remit to prefer indigenous Falkland Islands’ businesses, as was suggested by some consultees. This is because it is felt that making this a general requirement of FIDC would be a blunt tool and hard to express in a way that would not potentially undermine competition and inward investment and hence the wider economic interests of the community. Such a requirement is much easier to express in relation to particular industry regulatory environments (as is the case in the Fishery) and it is felt that specific legislation in relation to specific industry sectors is a much better instrument for Government to use to prioritise Falkland Islands and Falkland Islander owned businesses as and when appropriate.

6.8 Neither does it include any reference to the social, environmental and community responsibilities or effects of economic development. Executive Council has given no direction in this regard.

Relationship with Government

6.9 This should be prescribed more precisely than at present (though in the form of subsidiary legislation, enabling changes to be made more easily) in order to encourage a more strategic and enabling relationship.

- 6.10 The definition of the purpose of FIDC in 6.3 above does require it to pursue the Government’s economic strategy and that all its activities must be consistent with that strategy (“further steps”).
- 6.11 In addition FIDC should be required to submit and have approved by Executive Council within 12 months of a new Assembly a medium term (3 – 4 year) business plan, and to follow that business plan.
- 6.12 Significant Government control will also exist in the form of an annual subvention request which will entail approval to the Corporation’s budget.
- 6.13 Some variation needs to be allowed for. For the Corporation it is suggested that its Board should be able to flex its budget and business plan until the point a cumulative variation of 10% of the overall value (of the annual budget or medium term business plan) is reached, at which point specific approval of Executive Council will be required (which if forthcoming will result in a new baseline).
- 6.14 Executive Council should be able to request the Board of the Corporation to consider changes to its business plan or annual budget resulting from changed national priorities (and indeed may provide additional resources if required). The Board will be required to consider these.
- 6.15 Government could further retain a reserve power to direct the Board in the event of a recommendation for Government intervention either from the external auditors or from the Public Accounts Committee. The Board will also be required to have regard to any other recommendations of the external auditors or the Public Accounts Committee.
- 6.16 Government will retain no other powers over FIDC, other than appointments and Board membership as set out below.
- 6.17 However the specification of these arrangements in subsidiary legislation will make it easier for Government to change the above in extremis than if they were prescribed by Ordinance.

The Corporation’s Board

- 6.14 Valid points were made during the consultation in to the overall size of the board, in to the need to ensure all significant commercial sectors are represented and in to the appointments process.
- 6.15 Various combinations could be used to address the issues of Board size and composition. The following is provided for Executive Council to consider:

Position	Appointment
Chair	Public Appointments Committee recommendation to Executive Council
Vice-Chair	Public Appointments Committee recommendation to Executive Council
Ordinary Member	Public Appointments Committee recommendation to Executive Council
Legislative Assembly	Executive Council

Member	
Government Executive	Chief Ex Officio
Co-opted Member	By the 5 appointed/ex officio members ensuring that each significant commercial sector (agriculture, fishing, tourism, retail – as specified by subsidiary legislation) is represented by a suitably knowledgeable and experienced person (whether appointed member or co-opted). In the case of co-optees required to consult with the relevant sector’s association.
Co-opted Member	Ditto
Co-opted Member	Ditto
Co-opted Member	Ditto
Financial Secretary	Right to attend and speak but not vote
Managing Director	Right to attend and speak but not vote

- 6.16 Under this proposal, the facility would be to appoint up to four co-opted Board members to ensure all significant commercial sectors were represented (or indeed for any other reason if the Board wished), but it would not be necessary to seek to fill all the positions if representation had been achieved.
- 6.17 The terms of office also need to be agreed and it may be sensible to determine that members of the Board are appointed/co-opted for over-lapping terms to ensure adequate ‘corporate memory’ (the detailed arrangements can be worked up in legal drafting).
- 6.18 Consideration also needs to be given as to whether any or all of the Board should be remunerated. There is a good argument for remunerating the appointed Members to provide sufficient incentive for suitably qualified people and this is recommended.
- 6.19 It is proposed that the practice of nominating alternates be discontinued as this has proven to lead to inconsistencies and to reduce the ability of the Board to work as a focused team.
- 6.20 It is proposed that the General Manager be re-titled Managing Director to reflect the greater accountability of the position (with the removal of the Executive Vice Chair role) but that this post-holder does not have the ability to vote at Board meetings.
- 6.21 The Managing Director would be accountable to the Board as a whole. Their appointment by the Board would be subjected to confirmation by Executive Council.
- 6.22 Job descriptions and person specifications should be provided for all appointed and co-opted roles: these can be developed as part of the details if/once Executive Council has determined the overall composition of the Board.

Public Appointments Panel

- 6.23 During consultation reassurance was sought that the process in recommending appointments would be genuinely objective and fair. A process of open advertisement and assessment/interview against the person specification is anticipated but the issue is who conducts the process.
- 6.24 There are a number of potential solutions and the issue could become very complex and bureaucratic.

6.25 It is proposed to form a simple Public Appointments Committee to make recommendations to Executive Council consisting of:

- Speaker of the Assembly
- President of the Chamber of Commerce or their nominee
- FIG Head of HR

6.26 This Committee can be formed as and when required and oversee a process administered by the Head of HR, resulting in a recommended shortlist with appropriate information to Executive Council. Executive Council which would make a final choice from the short-list.

6.27 It can be left for Executive Council to determine which of them should be Chair and Vice Chair.

7 Financial Implications

7.1 None specific to this report.

8 Legal Implications

8.1 An amended or replacement Ordinance and supporting subsidiary legislation will need to be drafted. This is already recognised as a priority on the legislative drafting programme for 2011/12, and space exists to start on the work fairly soon.

APPENDIX ONE

Review of FIDC – terms of reference

1. Background

FIDC has been in existence since the mid 1980s. Its role in the promoting economic development has varied over the years. It would probably be fair to say that recently its reputation has diminished, possibly reflecting lack of clarity about its role and concerns about its capabilities. However a new General Manager was appointed in 2009 with a remit to improve things.

2. Issues

The key issues which appear to need resolving are:

1. What is the role of Government in taking the EDS forward?

In almost all states government plays a major role in economic development, both at the strategic/policy level (e.g. an economic development strategy, fiscal policy) and in terms of more detailed implementation (e.g. investment funding, training, business advice).

But what government does and how it does it needs to follow from the economic circumstances, policies and priorities of the time.

With the imminent completion of an Economic Development Strategy it should shortly be clear what our priorities are and how they should be approached. With this, we can determine the role of government and how it should best approach that role

2. How should that role be organised (including internal/external governance)?

Here in the Falklands since the mid 1980's the approach has been that Government sets the strategic priorities and policies, but FIDC undertakes the detailed implementation.

But a number of options are available ranging from implementation being undertaken by government directly (for example an economic development department) at one extreme to simply leaving it to the private sector at the other. Various organisational types exist in between at different distances from government.

Going back to basics, we can now think about what approach will work best for the Islands going forward, bearing in mind the priorities and approaches to economic development shortly to be provided by the Economic Development Strategy.

3. If that involves an external body, what exactly should the role/objectives of that body be? And what should be the exact role of FIG?

This has lacked clarity and the Corporation has recently lacked clear objectives. But the Economic Development Strategy will determine economic priorities and how they should be approached. If it's determined that an independent entity such as FIDC is required, then its exact role and its priorities can be clarified. Once they have been clarified the organisation can develop a business plan which shows how that role can be achieved.

4. How should the relationship/accountabilities of that body be organised, with respect to Government and other stakeholders (and bearing in mind what is assumed about funding)?

If there is to be an external development body, there is a balance to be struck in how far the it works under Government direction (bearing in mind it is a public funded body) and how far its board and staff should be able to operate without ‘interference’. Many feel the balance has not been appropriate and that has introduced tensions. In the light of a new strategic remit for FIDC or its successor provided by the EDS, it is a good time to review this and make recommendations which will provide for a sound, balanced, relationship for the next several years.

These may mean a fundamental change to the relationship with the Government. This could involve changes to board membership, remit and appointments. It could increase or reduce the ability of the Government to direct FIDC or its successor.

5. What capabilities/resources does it need including how it should organise them internally?

(or if there is to be no external body, what capabilities does government need and how should it organise them?)

Once the external body is clear about its overall future, its role and priorities in delivering the Economic Development Strategy, it can determine the resources and capabilities it will need to deliver that role. This may mean significant changes to the organisation and staffing of the current Corporation.

3. Approach

Questions 1 – 4 need to answered by Government in consultation with FIDC and other stakeholders such as the Chamber of Commerce, whereas Question 5 can, if the existence of FIDC or other external body is confirmed, be considered by FIDC and approved by Government as part of the budget and business planning process.

It is proposed that this review consist of suggesting answers to Questions 1 – 4 and that the Chief Executive be tasked to consult with key stakeholders in preparing a report which does this and provides options for Executive Council and Legislative Assembly to consider.