



SCOTTISH FUTURES TRUST

MANAGEMENT STATEMENT AND FINANCIAL MEMORANDUM

Scottish Futures Trust Ltd

Version: 1

Date: 26 October 2009

1. INTRODUCTION

1. This management statement and associated financial memorandum (MSFM) have been drawn up by the Scottish Government Finance Directorate („the Directorate“) in consultation with Scottish Futures Trust (SFT), a Public Corporation and company limited by shares.

2. Subject to the provisions of any future legislation relating to SFT, the management statement sets out the broad framework within which SFT will operate, in particular:

- SFT’s overall aims, objectives and targets in support of the Scottish Ministers’ wider strategic aims;
- the powers and guidelines relevant to the exercise of SFT’s functions, duties and powers;
- the conditions under which any public funds are paid to SFT; and
- how SFT is to be held to account for its performance.

3. The associated financial memorandum sets out in greater detail certain aspects of the financial framework within which SFT is required to operate.

4. The management statement and associated financial memorandum do not convey any legal powers or responsibilities.

5. The Management Statement and Financial Memorandum (MSFM) shall be reviewed and updated periodically by the Directorate in conjunction with SFT, normally at least every 2-3 years.

6. The guiding principle shall be that, while at all times meeting high standards of propriety and of good financial management, SFT will have the maximum operational independence.

7. On behalf of Scottish Ministers, the Portfolio Accountable Officer shall ensure that the financial controls upon SFT are appropriate and sufficient to safeguard public funds.

8. SFT or the Directorate may propose amendments to the MSFM at any time. Any such proposals by SFT will be considered in the light of the Scottish Ministers’ policy aims, operational factors and the track record of SFT itself. The Directorate and SFT shall agree what changes, if any, are to be incorporated in the MSFM. Legislative provisions, including those of the Companies Act under which the SFT is established, shall take precedence over any part of the MSFM.

9. SFT shall satisfy the conditions and requirements set out in the MSFM. Any question regarding the interpretation of the MSFM shall be resolved by the Directorate in consultation with SFT.

10. Copies of the final MSFM shall be made publicly available through the SFT website. Copies of the MSFM shall also be placed in the Scottish Parliament Information Centre and provided to the sponsoring Division in an electronic format for inclusion on the Scottish Government website.

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Memorandum and Articles of Association

1. FUNCTIONS DUTIES AND POWERS

1.1 Status

1.1.1 SFT is a company limited by shares responsible to Scottish Ministers through the Scottish Government's Finance Directorate ("the Directorate").¹

1.1.2 SFT was established by the Scottish Ministers in September 2008 as a new arms' length body to support the efficiency and effectiveness of public infrastructure planning, funding and delivery, leading to real and improved value for money solutions. The Scottish Futures Trust Ltd (Company No.348382) is a company established under the Companies Act 1985, 1989 and 2006. SFT is a company limited by shares.

1.2 Functions, duties and powers

1.2 SFT is bound by the terms of its Memorandum and Articles of Association. These also set out some features of its roles and responsibilities and aspects of operation for the Board and others. The Memorandum and Articles of Association are attached as Appendix A to this MSFM.

1.3 Classification

1.3.1 For policy/administrative purposes SFT is classified as a Public Corporation.

1.3.2 For national accounts purposes SFT is classified to the public corporations sector.

1.3.3 References to SFT include, where appropriate, all its subsidiaries and joint ventures that are classified to the public sector for national accounts purposes (excluding such bodies in which SFT has a minority interest). If such a subsidiary or joint venture is created, there shall be a document setting out the arrangements between it and SFT.

2. AIMS, OBJECTIVES AND TARGETS

2.1 Overall Aims

2.1.1 The aim of the Scottish Futures Trust is to improve the efficiency and effectiveness of infrastructure investment in Scotland by working collaboratively with public bodies and commercial enterprises, leading to better value for money and providing the opportunity to maximise the investment in the fabric of Scotland and hence contribute to the Scottish Government's single overarching purpose to increase sustainable economic growth

¹ Note that references in this document to the Scottish Government Finance Directorate, while correct as at the date of this Management Statement, should be read as references to whichever Scottish Government Directorate has responsibility for SFT from time to time.

2.1.2 The SFT will act across all phases of the infrastructure investment cycle: needs identification, options investigation, investment appraisal, procurement, financing, design, construction, life cycle management / maintenance and disposal with a particular focus on planning financing and procurement.

2.2 Objectives

2.2.1 SFT's key objectives across the infrastructure investment cycle are to:

- i. **improve value for money** in infrastructure investment
- ii. identify common ground and broker and improve **collaboration** between public bodies;
- iii. **innovate** and bring fresh approaches and models for infrastructure investment;
- iv. act as a **focal point** for public sector infrastructure investment in Scotland;
- v. act as a **central development / delivery vehicle** where this is appropriate;
- vi. Seek and promote opportunities for appropriate **aggregation or common approaches** to aspects of infrastructure investment;
- vii. Identify and implement opportunities to **reduce the cost of funding** for infrastructure;

2.3 Guiding Principles

2.3.1 In striving to meet its objectives, SFT will be guided by:

- i. Proper recognition of the **financial and non-financial aspects of value for money**;
 - ii. **Government policy and priorities** for infrastructure investment and related topics;
 - iii. The rules applying to government expenditure and their **impact on budgets and affordability**
 - iv. The positive impact of **high-quality design** and space planning on people's lives;
 - v. **Sustainability** in general and the need to **reduce carbon footprint** in particular;
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- vi. The needs of the **supply-side** in all aspects of infrastructure investment and from multinationals to SMEs.
 - vii. The **individual autonomy** of different public sector organisations;
 - viii. Its **non-profit distributing** status and **public-service ethos**.
 - ix. The needs and aspirations of **communities** on which infrastructure has a significant impact;

2.4 Targets

2.4.1 The primary financial target of the SFT once fully operational is to release between £100m and to £150 million each year for increased investment in Scotland's infrastructure, based on 2009/2010 levels of spending. Specific and measurable deliverables are set out in each year's business plan.

2.4.2 Its non-financial target is to be recognised by public and private sector infrastructure investment stakeholders as an expert body which is a focal point for public action in infrastructure planning and investment.

2.5 Setting and Changing Objectives and Targets

2.5.1 This MSFM sets SFT's objectives and targets. Any changes to SFT's objectives and key targets shall be agreed within SFT's corporate planning process (See Section 4 below).

3. RESPONSIBILITIES AND ACCOUNTABILITY

3.1 The Scottish Ministers

3.1.1 The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities and performance of SFT. Their responsibilities include:

- i. approving SFT's strategic objectives, overarching targets and the policy and performance framework within which SFT will operate (as set out in this Management Statement and associated Financial Memorandum (MSFM));
- ii. keeping the Parliament informed about SFT's performance;
- iii. approving the resource budget for services to be delivered by SFT, and to the extent required, securing the necessary Parliamentary approval;
- iv. carrying out responsibilities specified in the Articles of Association, including appointments to the Board, approving the terms and

conditions of Board Members, collaborating with the Chairperson over appointment of the Chief Executive; and laying of an annual report and accounts before the Parliament;

- v. issuing an annual letter agreeing SFT's proposal for services and the annual fee Ministers will agree to fund for those services;
- vi. agreement of five yearly corporate plans; and
- vii. meeting with the SFT board at least annually to discuss performance progress and future objectives.

3.2 The Portfolio Accountable Officer

3.2.1 The Director General Economy is the Portfolio Accountable Officer – as designated by the Principal Accountable Officer for the Scottish Administration – with responsibility for programme expenditure and related activities undertaken by the sponsor Directorate.

3.2.2 In particular the Portfolio Accountable Officer shall ensure that:

- i. SFT's strategic aims and objectives support the Scottish Ministers' pursuit of value for money in infrastructure investment;
- ii. the financial and other management controls applied by the Directorate to SFT are appropriate and sufficient to safeguard public funds and for ensuring that SFT's compliance with those controls is effectively monitored ("public funds" include not only any funds provided to SFT by the Scottish Ministers but also any other funds falling within the stewardship of SFT, including gifts, bequests and donations);
- iii. the internal controls applied by SFT conform to the requirements of regularity, propriety and good financial management;
- iv. any funding provided to SFT is within the scope and the amount authorised by Ministers; and

3.2.3 The Portfolio Accountable Officer will appraise the performance of the Chairperson of SFT annually.

3.2.4 The responsibilities of a Portfolio Accountable Officer are set out in more detail in the Memorandum to Accountable Officers for Parts of the Scottish Administration – see Annex 1 of the section on Accountability in the Scottish Public Finance Manual (SPFM).

3.3 The sponsoring Division in the Finance Directorate

3.3.1 Within the Finance Directorate, Capital and Risk are the sponsoring Division for SFT. The Division, in consultation as necessary with the Portfolio Accountable Officer, is the primary source of advice to Scottish Ministers on the discharge of their responsibilities in respect of SFT, and the primary point of contact for SFT in dealing with the Directorate. The sponsoring Division shall carry out its duties under a senior officer who shall have primary responsibility for overseeing the activities of SFT.

3.3.2 The sponsoring Division shall advise the **Scottish Ministers** on:

- i. updates to the objectives and targets for SFT in the light of the Scottish Ministers' wider strategic aims
- ii. an analysis of SFT's proposal for services and the appropriate corresponding fee for such services in the light of the Scottish Ministers' overall public expenditure priorities;
- iii. SFT's performance against its strategic objectives and its value for money remit.

3.3.3 In support of the **Portfolio Accountable Officer**, the sponsoring Division will:

on performance and risk management

- i. monitor SFT's service delivery on a continuing basis through an adequate and timely flow of information from SFT on performance, budgeting, control and risk management, including early sight of SFT's Statement on Internal Control;
- ii. ensure that the activities of SFT and the risks associated with them are properly and appropriately taken into account in the Scottish Government's risk assessment and management systems;
- iii. ensure that appointments to the Board are made timeously and in line with the Code of Practice of the Office of the Public Appointments Commissioner for Scotland (OCPAS);

on communication with SFT

- iv. inform SFT of relevant Scottish Government policy in a timely manner; advise on the interpretation of that policy; and issue specific guidance to SFT as necessary;
- v. bring concerns about the activities of SFT to the attention of the Chief Executive or full Board if necessary, and require explanations and

assurances from the Chief Executive or Board that appropriate action has been taken.

on working in partnership

- vi. work in partnership with SFT to help it achieve value for money.

3.4 The Chairperson of SFT

3.4.1 The Chairperson of SFT is appointed by Scottish Ministers and acts as principal spokesperson for SFT. Following the initial set up arrangements the appointment procedures for the Chairperson will be in line with the Code of Practice of OCPAS.

3.4.2 The Chairperson is responsible to the Scottish Ministers. The Chairperson shall aim to ensure that SFT's policies and actions support the wider strategic policies of the Scottish Ministers and the realisation of the Scottish Government's Infrastructure Investment Plan; and that SFT's affairs are conducted with probity. The Chairperson shares with other Board members the corporate responsibilities set out in paragraph 3.5.2, and in particular for ensuring that SFT fulfils the aims and objectives set by the Scottish Ministers.

3.4.3 The Chairperson has particular leadership responsibility on the following matters:

- i. formulating the Board's strategy;
- ii. ensuring that the Board, in reaching decisions, takes proper account of guidance provided by the Scottish Ministers/Directorate;
- iii. promoting the efficient and effective use of staff and other resources;
- iv. encouraging high standards of propriety; and
- v. representing the views of the Board to the general public.

3.4.4 The Chairperson shall also:

- i. ensure that SFT operates according to the requirements of the Memorandum and Articles of Association for SFT;
- ii. ensure that all members of the Board, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities, and receive appropriate induction training, including on the financial management and reporting requirements of public sector bodies and on any differences which may exist between private and public sector practice;

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- iii. advise the Scottish Ministers of the needs of SFT when Board vacancies arise, with a view to ensuring a proper balance of professional and financial expertise;
 - iv. assess the performance of individual Board members on an annual basis;
 - v. Appoint, following agreement of Scottish Ministers, the Chief Executive. The Chairperson will lead the appointment process and will chair the Appointment Panel. The appointment process will follow the guidance for public appointments set out by the Office of the Commissioner for Public Appointments in Scotland. The Appointment Panel will include a member of the Scottish Government. Ministers will approve the remuneration and terms and conditions of employment (normally prior to advertising the vacancy);
 - vi. set performance objectives for the Chief Executive which give due weight both to the proper management and use of public monies and to the delivery of outcomes in line with SFT's objectives. Review annually the performance of the Chief Executive and communicate the results of this to the Directorate.; and
 - vii. ensure that members of the Board uphold the requirements of the Companies Act as regards ethical standards.

3.4.5 Communications between the Board and the Scottish Ministers shall normally be through the Chairperson. The Chairperson shall ensure that other Board members are kept informed of such communications.

3.5 The SFT Board

3.5.1 Board Members will be appointed by the Scottish Ministers, in line with the OCPAS Code of Practice.

3.5.2 The Board has corporate responsibility for ensuring that SFT fulfils the aims and objectives set out in this MSFM and for promoting the efficient and effective use of staff and other resources by SFT in accordance with the principles of Best Value. To this end, and in pursuit of its wider corporate responsibilities, the Board shall:

- i. establish the overall strategic direction of SFT;
- ii. ensure that the Scottish Ministers are kept informed of any changes which are likely to impact on the strategic direction of SFT, on the achievability of its targets, or delivery of its agreed services and determine the steps needed to deal with such changes;

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- iii. ensure that any statutory or administrative requirements for the use of public funds (ie all funds falling within the stewardship of SFT) are complied with; that the Board operates within the limits of any statutory authority and any delegated authority agreed with the sponsor Directorate, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Board takes into account relevant guidance issued by the Scottish Ministers/sponsor Directorate;
 - iv. ensure that the Board receives and reviews regular financial information concerning the management of SFT; is informed in a timely manner about any concerns about the activities of SFT; and provides positive assurance to the Directorate that appropriate action has been taken on such concerns;
 - v. demonstrate high standards of corporate governance at all times, including by setting up and using an [independent] audit committee - in accordance with the guidance on Audit Committees in the SPFM - to help the Board to address the key financial and other risks facing SFT and to assure itself on the effectiveness of the internal control and risk management systems;
 - vi. provide commitment and leadership in the development and promotion of best value principles and characteristics throughout the organisation as described in section 3.6.3 below; and
 - vii. develop, maintain and review an effective and appropriate system of internal control as described in Section 4.6 below.

3.5.3 Individual Board members shall act in accordance with their wider responsibility as Members of the Board – namely to:

- i. comply at all times with the ethical standards [paragraph 3.4.4 above] adopted by SFT and with the rules relating to the use of public funds, conflicts of interest and confidentiality;
- ii. not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- iii. comply with the Board’s rules on the acceptance of gifts and hospitality and of business appointments; and
- iv. act in good faith and in the best interests of SFT.

3.6 The SFT Chief Executive

3.6.1 The Chief Executive of SFT is responsible for safeguarding the public funds (being those paid to SFT for the provision of services or any other funds as may be under the stewardship of SFT from time to time) for which he/she has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of SFT. He/she should act in accordance with the terms of this Management Statement and Financial Memorandum (MSFM).

3.6.2 The Chief Executive has a duty to secure best value, which includes the concepts of good corporate governance, performance management and continuous improvement. The principles of best value that should be secured and characteristics that should be displayed are set out below:

Best value principles:

- To make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost; and in making those arrangements and securing that balance;
- To have regard to economy, efficiency, effectiveness, the equal opportunities requirements, and to contribute to the achievement of sustainable development.

Best value characteristics:

- Commitment and Leadership
- Sound Governance at a Strategic and Operational Level
- Accountability
- Sound Management of Resources
- Responsiveness and Consultation
- Use of Review and Options Appraisal
- A Contribution to Sustainable Development
- Equal Opportunities Arrangements
- Joint Working;

3.6.3 The Chief Executive will exercise the following specific responsibilities:

on planning, performance management and monitoring

- i. establish SFT's corporate and business plans in the light of the aims and objectives set out in this document;
- ii. propose to the Directorate an annual plan for service delivery in line with the business plan, and a cost for the range of services;
- iii. establish a robust performance management framework which supports the achievement of SFT's aims and objectives as set out in the corporate and business plans, including assessment and

measurement against objectives; and which enables full performance reporting to the Board, the Directorate and the wider public;

- iv. ensure that timely forecasts and monitoring information on performance and finance are provided to the Directorate; that if overspends/ underspends against budget are likely or if the delivery of agreed services or performance targets are at serious risk, corrective action is taken through SFT's management control purposes and the Directorate is notified promptly; and that any significant problems, whether financial or otherwise, and whether detected by internal audit or by other means, are notified to the Directorate in a timely fashion;
- v. discuss with the Directorate any in-year change to the range of services to be delivered and agree any variation in cost required to reflect the change in services;

on advising the Board

- vi. advise the Board on the discharge of its responsibilities as set out in this document and in any other relevant instructions and guidance issued by the Scottish Ministers/sponsor Directorate;
- vii. advise the Board on SFT's performance compared with its agreed range of services and its aims and objectives;
- viii. ensure that financial considerations are taken fully into account by the Board at all stages in reaching and executing its decisions, and that standard financial appraisal techniques as set out in the "Green Book" are followed as far as this is appropriate and practical;
- ix. if the Chief Executive considers that the Board, or its Chairperson, is contemplating a course of action which he/she considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration or efficiency or effectiveness, make the Board aware of such inconsistency and insofar as it is not remedied to his/her satisfaction, report the matter to the Portfolio Accountable Officer.

on managing risk and resources

- x. ensure that an appropriate system of risk management is embedded in the organisation to inform decisions on financial and operational planning and to assist in achieving objectives and targets;
- xi. ensure that an effective system of programme and project management and contract management is maintained;

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- xii. ensure that all funds made available to SFT (including any approved income or other receipts) are used for the purpose intended by the Parliament, and that such monies, together with SFT's assets, equipment and staff, are used economically, efficiently and effectively;
 - xiii. ensure that adequate internal management and financial controls are maintained by SFT, including effective measures against fraud and theft;
 - xiv. maintain a comprehensive system of internal delegated authorities which are notified to all staff, together with a system for regularly reviewing compliance with these delegations;
 - xv. ensure that effective human resource management policies are maintained and that strategic human resource planning is related to SFT's objectives;

on accounting for SFT's activities

- xvi. sign the accounts and be responsible for ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Scottish Ministers;
- xvii. sign a Statement on Internal Control in accordance with Section 4.6, for inclusion in the annual report and accounts;
- xviii. ensure that an effective complaints procedure is in place (including, where applicable, reference to the Scottish Public Services Ombudsman) and made widely known; and
- xix. give evidence when summoned before Committees of the Scottish Parliament on the use and stewardship of public funds by SFT.

3.6.5 The Chief Executive will ensure that SFT follows the requirements of the Freedom of Information (Scotland) Act 2002. This includes the establishment of a publication scheme for SFT and for the publication of information held by SFT.

3.6.6 The Chief Executive may delegate the day-to-day administration of his/her responsibilities to other employees in SFT. However, he/she will remain accountable for the responsibilities set out in this document.

3.6.7 The Chief Executive is responsible for informing the Portfolio Accountable Officer about any complaints about SFT accepted by the Scottish Public Services Ombudsman for investigation, and about SFT's proposed response to any subsequent recommendations from the Ombudsman.

3.6.8 In order to respond to Parliamentary Questions and to correspondence from Members of the Scottish Parliament about issues relating to SFT, Scottish Ministers will expect SFT to provide information within appropriate timescales providing that the cost of gathering any information not immediately available does not exceed the prescribed limit. In the case of correspondence on operational issues or particular cases about decisions of SFT, the Scottish Ministers will encourage MSPs (as well as MPs and MEPs) to write direct to the Chief Executive of SFT and they will also refer correspondence they have received to SFT for reply.

4. PLANNING, BUDGETING AND CONTROL

4.1 The corporate plan

4.1.1 Consistent with the timetable for public spending reviews, SFT shall submit to the Directorate the SFT corporate plan covering a 3-5 year period. The plan, or elements thereof, will be updated between public spending reviews as and when considered necessary.

4.1.2 The plan shall reflect SFT's aims and objectives set out in the MSFM.

4.1.3 The corporate plan shall set out:

- i. SFT's key objectives and associated key performance targets for the next 3-5 years, and its strategy for achieving those objectives;
- ii. alternative scenarios to take account of factors which may significantly affect the execution of the plan but which cannot be accurately forecast; and
- iii. other matters as agreed between the Directorate and SFT.

4.2 The business plan

4.2.1 The business plan for the year immediately ahead shall be consistent with the corporate plan. The business plan shall be updated annually by SFT to include key targets and milestones for the forthcoming year.

The business plan will be the basis of SFT proposing the services that it will deliver.. Such services may be amended in-year in accordance with 3.6.3v above.

4.3 Publication of plans

4.3.1 Subject to any commercial considerations the corporate and business plans shall be published / made available on the SFT's website. Either the full plans or summary versions shall be made available to SFT staff.

4.4 Reporting performance to the Directorate

4.4.1 SFT shall operate management information and accounting systems which enable it to review in a timely and effective manner its financial and non-financial performance against the objectives and targets set out in its Corporate Plan, and the range of annual objectives, services and budgets set out in its business plan.

4.4.2 SFT shall take the initiative in informing the Directorate timeously of changes in external conditions which make the achievement of objectives and/or delivery of agreed services more or less difficult, and which may require a change to the objectives set out in the corporate plan or range of services and budget set out in the business plan.

4.4.3 SFT's service delivery shall be reported to the Directorate regularly, accompanying invoices for the services that it has delivered;

4.4.4 SFT's performance in helping deliver agreed key objectives will be reported to the Directorate on a half yearly basis. Performance will be reviewed half yearly by officials from the Directorate. The Scottish Ministers will meet the Board formally on an as-required basis but at least annually to discuss SFT's performance, its current and future activities and any policy developments relevant to those activities.

4.4.5 SFT's performance against key targets will be reported in the SFT annual report and accounts [see Section 5.1 below]. Other forms of reporting performance to the public should also be considered.

4.5 Budgeting procedures

4.5.1 SFT's budgeting and invoicing procedures are set out in the associated financial memorandum.

4.6 Internal Control

4.6.1 SFT shall comply with the internal control requirements of the Combined Code and the Financial Reporting Council's Guidance for Directors on Internal Control dated October 2005 as if it was a UK listed Company. This includes that the board should maintain a sound system of internal control, reviewed at least annually and reported on in the form of a Statement on Internal Control in the annual report.

4.6.2 SFT shall notify any unusual or major incidences of internal control failures, including fraud and theft as soon as is reasonably possible.

4.6.3 The Directorate may, at any time, require an independent audit of SFT's internal control arrangements if it reasonably suspects that adequate systems are either not in place, or are failing to properly safeguard public funds.

5. EXTERNAL ACCOUNTABILITY

5.1 The annual report and statement of accounts

5.1.1 After the end of each financial year (1 April to 31 March) SFT shall publish an annual report of its activities together with its audited annual accounts. The report shall also cover the activities of any subsidiary or joint venture under the majority control of SFT.

5.1.2 The report and accounts shall comply with the requirements of the Companies Act and any accounts direction issued by the Scottish Ministers.

5.1.3 The report and accounts shall outline SFT's main activities and performance during the previous financial year against its stated objectives and targets, and set out in summary form SFT's forward plans.

5.1.4 Information on performance against key financial targets shall be included in the notes to the accounts and will therefore be within the scope of the audit.

5.1.5 The report and accounts will be submitted in draft to the Directorate and the final version will be laid before the Parliament by the Scottish Ministers before 31 December at the latest. SFT will be responsible for the publication of the report and accounts.

5.2 External audit

5.2.1 The Board of SFT will appoint auditors to audit SFT's annual accounts and pass them to the Scottish Ministers who shall lay them before the Parliament, together with SFT's annual report.

5.3 Value for Money (VFM) / Economy, Efficiency and Effectiveness (3E) Examinations

5.3.1 SFT agrees that the Auditor General for Scotland (AGS) may carry out examinations into the economy, efficiency and effectiveness with which SFT has used its resources in discharging its functions. For the purpose of these examinations the AGS has statutory access to documents and information held by relevant persons specified by an Order made under the Public Finance and Accountability (Scotland) Act 2000.

6. STAFF MANAGEMENT

6.1.1 SFT shall have responsibility for the recruitment, retention and motivation of its staff. To this end SFT shall ensure that:

- i. the recruitment of its staff is based on fair and open competition and equal opportunities;

- ii. the level and structure of its staffing, including seniority and numbers of staff, is appropriate to its functions and the requirements of efficiency, effectiveness and economy;
- iii. staff are employed on the basis of a set of written terms and conditions agreed by the Board
- iv. the performance of its staff at all levels is managed effectively and efficiently; their performance is appraised regularly; and SFT's performance management and career development systems are reviewed from time to time;
- v. proper consultation with staff takes place on key issues affecting them;
- vi. adequate grievance and disciplinary procedures are in place;
- vii. whistleblowing procedures consistent with the Public Interest Disclosure Act are in place;
- viii. a code of business conduct for staff is in place

6.1.2 SFT will determine the pay, allowances and other remuneration elements to be applied to its employees on the following basis:

- i. Within the context of public sector ownership and the pursuance of its overall aims, SFT shall seek to attract, retain and motivate leadership and talent in competition with other organisations both in the public and private sectors. Remuneration levels for individual posts shall be determined through gaining an understanding of market value, followed by a recruitment process which seeks to deliver best value for money for each role. Remuneration for individual posts shall be agreed by the Remuneration Committee of the Board.
- ii. Remuneration for professional staff shall include: base salary; performance incentive scheme; access to the Local Government Pension Scheme and (where applicable) allowances (for business needs, car, relocation, etc.).
- iii. The annual review of base salaries shall be undertaken by the Chief Executive and approved by the Remuneration Committee. Individual reviews will be based on a combination of performance and market conditions for a given role. Any overall increase in payroll costs should be justifiable based on market conditions and be deliverable within the agreed Business Plan.

- iv. SFT is a performance-orientated organisation. It may develop a performance incentive scheme for professional staff that is closely related to both corporate and individual performance. The maximum performance incentive payment shall generally not exceed 10% of base salary for staff and 15% of base salary for Executive Directors. Any exception to this shall be agreed in advance with the Directorate. Any performance incentive payments shall be non-pensionable.

6.1.3 SFT should establish and maintain appropriate superannuation provision for employees. This superannuation scheme will be subject to approval by Scottish Ministers. SFT will inform the Directorate of any proposed significant changes to this superannuation scheme and obtain approval from Scottish Ministers to such changes.

7. REVIEWING THE ROLE OF SFT

7.1 The role of SFT shall be reviewed periodically, in accordance with the business needs of the Scottish Government and of SFT, normally at least every five years.

APPENDIX A

MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

of SCOTTISH FUTURES TRUST CO. LIMITED

THE COMPANIES ACTS 1985, 1989 AND 2006

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

SCOTTISH FUTURES TRUST LIMITED

- 1 The Company's name is Scottish Futures Trust Limited.
- 2 The Company's Registered Office is to be situated in Scotland.
- 3 The Company's objects are to encourage, facilitate, plan, fund, procure and deliver assets, infrastructure and other projects initiated or pursued wholly or partly by or for the benefit of governmental bodies, local authorities, other bodies wholly or partly funded through public funds, and non-profit distributing bodies, in Scotland (hereinafter referred to as "**Infrastructure**") including, without limitation, by:
 - 3.1 developing, by itself or in partnership with other organisations, national, regional and/or sectoral strategies, plans, policies and programmes for the delivery of Infrastructure;
 - 3.2 acting as a focal point for public sector action in Infrastructure investment, including (without limitation) by promoting and disseminating innovation, good practice, experience and value for money in Infrastructure investment;
 - 3.3 identifying and promoting opportunities for investment in Infrastructure;
 - 3.4 raising finance by any means from institutions and/or the public for the purposes of investing in Infrastructure;
 - 3.5 procuring Infrastructure for itself or on behalf of other parties;
 - 3.6 monitoring, reviewing, reporting on and validating the effectiveness of investment in Infrastructure;

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- 3.7 supporting or facilitating any of the above objects by means of supporting, advising, providing consultancy services, or personnel to, or collaborating with, or entering into joint venture arrangements with other parties; and
- 3.8 doing all such other things or activities as are incidental or conducive to the attainment of the above objects.
- 4 In pursuance of the above objects (but not otherwise) the Company shall have the following powers:
- 4.1 To carry on, directly or indirectly, and whether by itself or through a subsidiary or subsidiaries, associated, affiliated or allied companies any business, project, venture, whether joint or otherwise, undertaking or enterprise of any description whether of a public or a private nature and any or all trades, activities and processes in connection with or ancillary or complementary, or necessary in relation to the business of the Company.
- 4.2 To carry on any business which, in the opinion of the Directors of the Company, can be carried out for the benefit of the Company or any business which is calculated directly or indirectly to enhance the value of any of the Company's property or rights, and to conduct and carry on any part of the Company's business as a separate concern, and to employ in any such separate business any particular part of the Company's capital, and to keep separate capital and income accounts of any such separate part of the Company's business.
- 4.3 To purchase, sell, feu, exchange, improve, grant securities over, rent, let on lease, hire, surrender, license, accept surrenders of, and otherwise acquire and/or deal with any land or interest in land and other property of any tenure or description, either for the Company exclusively or jointly with any other company, and to erect, pull down, repair, alter, develop, hold or otherwise deal with any land or buildings and adapt the same for the purposes of the Company's business.
- 4.4 To buy, sell, manufacture, repair, alter, improve, manipulate, prepare for market, let on hire and generally deal in all kinds of plant, machinery, apparatus, tools, utensils, materials, produce, substances, articles and things for the purpose of any of the businesses specified herein or likely to be required by customers or other persons having or about to have dealings with the Company.
- 4.5 To purchase or otherwise acquire all or any part of the business or assets of any person, firm or company carrying on or formed to carry on any business which the Company is authorised to carry on or possessed of property suitable for the purposes of the Company, and to pay cash or to issue any shares, stocks, debentures or debenture stock of the Company as the consideration for such purchase or acquisition and to undertake any liabilities or obligations relating to the property or business so purchased or acquired.
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- 4.6 To sell, lease, exchange, surrender, or otherwise deal with the whole of the undertaking and assets of the Company, or any part thereof, for such consideration as the Company may think fit, and in particular for any shares (whether credited as partly or fully paid up or otherwise) debentures, or securities of any other company
- 4.7 To amalgamate, enter into partnership or into any arrangement for sharing profits, union of interest, joint adventure, reciprocal concessions or co-operation with any persons or company carrying on or proposing to carry on any business within the objects of the Company and to take or otherwise acquire and hold shares or stock in, or securities of, and to subsidise or otherwise assist any such company, and to sell, hold, re-issue with or without guarantee, or otherwise deal with such shares or securities.
- 4.8 To promote or form any other company or companies for the purpose of acquiring all or any part of the property and liabilities of the Company for the time being, or for any other purpose which may be directly or indirectly calculated to benefit the Company, and to pay or contribute towards the preliminary expenses of any such company or companies, or provide the whole or part of the capital thereof, or take shares therein, or lend money thereto upon debentures or otherwise.
- 4.9 To apply for and otherwise acquire any patents, brevets d'invention, licences, trademarks, rights to use processes, concessions and the like conferring an exclusive or non-exclusive, or limited right to use any process or invention, or any secret or other information as to any invention which may seem calculated directly or indirectly to benefit the Company, and to work out, devise, develop, test, demonstrate, improve and perfect any such process or invention, and to use, exercise, develop, grant licences in respect of, or otherwise turn to account any such patents, brevets d'invention, licences, trademarks, rights to use processes, concessions and the like, and the property, rights and information so acquired.
- 4.10 To lend money to such persons, upon such terms and subject to such conditions as may be desirable, and with or without security therefor.
- 4.11 To borrow or raise money or secure the payment of money or performance of obligations (whether by or of the Company or any other person) in such manner as the Directors shall think fit, and in particular by the granting of bonds, charges and rights in security and by the issue of debentures or debenture stock charged upon all or any of the Company's property both present and future, including its uncalled capital, and to re-issue any debentures at any time paid off.
- 4.12 To grant a Power of Attorney in favour of any person, partnership, firm, company or other body of persons, whether corporate or unincorporated, to carry out on behalf of the Company any act or acts that the Company may lawfully carry out and as the Company shall so authorise in a Power of Attorney.

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- 4.13 To guarantee the payment of any debentures, debenture stock, bonds, mortgages, charges, obligations, interest, dividends, securities, moneys or shares or the performance of contracts or engagements of any other company or person, and to give indemnities and guarantees of all kinds.
- 4.14 To pay for any property, rights, privileges or concessions acquired or agreed to be acquired by the Company, and generally to satisfy any payment due by, or obligations of, the Company, by the issue of shares of this or any other company credited as fully or partly paid up, or of debentures or other securities of this or any other company.
- 4.15 To the extent permitted by law, to give financial assistance for the purpose of the acquisition of shares in the Company or the Company's holding company for the time being (as defined by Section 736 of the Companies Act 1985) and to give such assistance by any means howsoever permitted by law.
- 4.16 To draw, make, accept, endorse, negotiate, discount, buy, sell, deal in, execute and issue promissory notes, bills of exchange, debentures, warrants, and other negotiable or transferable instruments, securities or documents.
- 4.17 To purchase, subscribe for, or otherwise acquire and hold shares, stocks, debentures, debenture stocks, or other interests in, or obligations of any other company or corporation, and to invest and deal with the moneys of the Company not immediately required for the purposes of the Company in or upon such securities and subject to such conditions as may seem expedient.
- 4.18 To remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing or procuring the underwriting of any of the shares or debentures or other securities of the Company or of any company in which the Company may be interested or proposes to be interested, or in or about the conduct of the business of the Company.
- 4.19 To pay out of the funds of the Company all expenses which the Company may lawfully pay relating or incidental to the formation, registration and advertising of or raising money for the Company and the issue of its capital, or for contributing to or assisting any company either issuing or purchasing with a view to issue all or any part of the Company's capital in connection with the advertising or offering of the same for sale or subscription, including brokerage and commissions for obtaining applications for or taking, placing or underwriting or procuring the underwriting of shares, debentures or debenture stock.
- 4.20 To establish and maintain, or procure the establishment and maintenance of, any pension or superannuation funds (whether contributory or otherwise) for the benefit of, and to give or to procure the giving of donations, gratuities, pensions, allowances and emoluments to, any persons who are or were at any time in the employment or service of the Company, or any of its predecessors in business, or of any company which is a subsidiary of the Company or is allied to
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or associated with the Company or with any such subsidiary, or who may be or have been directors or officers of the Company, or of any such other company as aforesaid, and the wives, widows, families, relations and dependants of any such persons, and to establish, subsidise and subscribe to any institutions, associations, societies, clubs or funds calculated to be for the benefit of, or to advance the interests and well-being of the Company or of any other company as aforesaid, or of any such persons as aforesaid, and to make payments for or towards the insurance of any such persons as aforesaid, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object and to do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid.

- 4.21 To remunerate any person or company rendering services to the Company.
- 4.22 To redeem or purchase any shares or securities of the Company.
- 4.23 To promote or sponsor any primary or secondary legislation of the Scottish Parliament or of the United Kingdom Parliament for enabling the Company to carry any of its objects into effect, and to oppose any proceedings or applications which may seem likely directly or indirectly to prejudice the Company's interests.
- 4.24 To do all such other things as are incidental or conducive to the attainment of the Company's objects or any of them in any part of the world, and either as principals, agents, contractors, trustees or otherwise and either alone or in conjunction with others and either by or through agents, sub-contractors, trustees or otherwise.

AND IT IS HEREBY DECLARED THAT:-

- 4.24.1 The word "company" in this clause, except where used in reference to the Company, shall be deemed to include any partnership, firm or other body of persons, whether corporate or unincorporate, and whether domiciled in the United Kingdom or elsewhere.
- 4.24.2 The words "United Kingdom" in this clause means the United Kingdom of Great Britain and Northern Ireland.
- 4.24.3 In this clause, words denoting the singular number only shall include the plural and vice versa.
- 4.24.4 The powers specified in each of the paragraphs of this clause shall be regarded as independent powers, and accordingly shall not be limited or restricted (except where otherwise expressed in such paragraphs) by reference to or inference from the terms of any other paragraph or the name of the Company. In all cases, the powers shall be

capable of being exercised only in direct furtherance of the objects of the Company as set out in Clause 3.

- 5 The liability of the members is limited.
- 6 The Company's Share Capital is £100 divided into 100 shares of £1 each.
- 7 The Company shall be non-profit distributing, meaning that all income and property of the Company, howsoever derived, shall (other than on the winding-up of the Company) be applied solely towards the promotion of the objects of the Company as set out in Clause 3 and no portion thereof shall be paid or transferred directly or indirectly by way of profit to the members of the Company.

We, the subscriber to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum; and we agree to take the number of shares set out in the table below.

Name and address of Subscriber	Number of shares taken by the Subscriber
Scottish Ministers St. Andrew's House Regent Road Edinburgh EH1 3DG	Two
Signature: ..." <i>Stella Manzie</i> "..... For and on behalf of the Scottish Ministers	
Before this witness: - ..." <i>Alistair Brown</i> ".....(sign) ..." <i>Alistair Brown</i> "..... (print name) ..." <i>Room 3B 77</i> "..... (address) ..." <i>Victoria Quay</i> "..... ..." <i>Edinburgh EH6 6QQ</i> ".....	
Total shares taken	Two

Dated: "9 September" 2008

THE COMPANIES ACTS 1985, 1989 AND 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

SCOTTISH FUTURES TRUST LIMITED

1 Preliminary

1.1 The Regulations in Table A in the Schedule to The Companies (Tables A to F) Regulations 1985 as amended by The Companies (Tables A to F) (Amendment) Regulations 2007 and The Companies (Tables A to F) (Amendment) (No. 2) Regulations 2007 as that Schedule was in force on the date of adoption of these Articles (hereinafter called "Table A") shall apply to the Company save to the extent that they are excluded by or are inconsistent with any of these Articles.

1.2 Regulations 5, 8, 46, 54, 64, 66 to 69 inclusive, 76 to 79 inclusive, 81, 82, 83, 87, 88, 89 91, 101, 102 to 108 inclusive, 110, 117 and 118 of Table A shall not apply to the Company.

2 Interpretation

2.1 Regulation 1 of Table A shall apply to these Articles as it applies to the Regulations in Table A.

3 Share capital

3.1 The Company shall be entitled, but shall not be bound, to accept and, in case of acceptance, shall be entitled to record in such manner as it may think fit notices of any trusts in respect of any of the shares of the Company. Notwithstanding any such acceptance and/or the making of any such record, the Company shall not be bound to see to the execution, administration or observance of any trust, whether expressed, implied or constructive in respect of any shares of the Company and shall be entitled to recognise and give effect to the acts and deeds of the registered holders of such shares as if they were absolute owners thereof. For the purpose of this Article 'trust' includes any right in respect of any shares of the Company other than an absolute right thereto in the registered holder thereof for the time being or such other rights in case of transmission thereof as hereinafter mentioned.

4 Non-distribution of profits and assets

4.1 No share shall carry any entitlement to a dividend or (except to the extent permitted by Article 16) other distribution.

- 4.2 No share shall be redeemable.
- 4.3 The Company shall not transfer any of its assets to any member or Affiliate other than for full consideration except as may be required by law.
- 4.4 Article 4.3 shall not apply to any distribution of assets to members on a winding up, but only to the extent permitted by Article 16.
- 4.5 The Company shall not transfer any assets to any person (not being a member or Affiliate) other than for full consideration except as approved by the members by ordinary resolution.
- 4.6 For the purposes of Article 4:
- 4.6.1 **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with a member; and
- 4.6.2 **"Control"** has the meaning given in section 89J of the Financial Services and Markets Act 2000 and "controls" and "controlled" shall be construed accordingly.

5 Lien

- 5.1 The Company shall have a first and paramount lien on every share for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share and, in the case of a share standing registered in the name of a single person, for all moneys presently payable by that person or his estate to the Company. The Directors may at any time declare any share to be wholly or partially exempt from the provisions of this Article. The Company's lien on a share shall extend to any amount payable in respect of that share, whether by way of dividend or otherwise.

6 Proceedings at general meetings

- 6.1 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded. Subject to the provisions of the Act, a poll may be demanded by any member present in person or by proxy.

7 Votes of members

- 7.1 Subject to any rights or restrictions attached to any shares, on a show of hands every member who is present in person or by proxy or by a duly authorised representative shall have one vote, and on a poll every member shall have one vote for every share of which he is the holder.

8 Number of directors

- 8.1 The maximum number and minimum number respectively of the Directors may be determined from time to time by ordinary resolution of the Company. Subject to and in default of such

determination there shall be no maximum number of Directors and the minimum number of Directors shall be one. Whensoever the minimum number of the Directors shall be one, a sole Director shall have authority to exercise all the powers and discretions expressed by these Articles to be vested in the Directors generally, and Regulations 89 and 90 in Table A shall be modified accordingly.

9 Alternate directors

9.1 Any Director (other than an Alternate Director) may appoint any other Director, or any other person approved by ordinary resolution and willing to act, to be an Alternate Director and may remove from office an Alternate Director so appointed by him.

9.2 An Alternate Director shall be entitled to receive notice of all meetings of Directors and of committees of Directors of which his appointor is a member, to attend and vote at any such meeting at which the Director appointing him is not personally present, and generally to perform all the functions of his appointor as a Director in his absence.

9.3 Any appointment or removal of an Alternate Director may be made by letter, cable, telex, telegram, facsimile message or electronic communication or in any other manner approved by the Directors. Any cable, telex, telegram, facsimile message or electronic communication shall be confirmed as soon as possible by letter, but may be acted upon by the Company meanwhile.

9.4 The remuneration of any Alternate Director shall be payable out of the remuneration of the Director appointing him, and shall consist of such portion of the last-mentioned remuneration as shall be agreed between the Alternate Director and his appointor.

9.5 An Alternate Director shall cease to be an Alternate Director if his appointor ceases for any reason to be a Director; but if a Director, having vacated office at a meeting of the Company, is re-appointed or deemed to have been re-appointed at that meeting, any appointment of an Alternate Director made by him which was in force immediately prior to his vacation of office shall continue after his re-appointment.

9.6 Every person acting as an Alternate Director shall be an officer of the Company and shall alone be responsible to the Company for his own acts and defaults, and he shall not be deemed to be the agent of or for the Director appointing him.

9.7 An Alternate Director shall not be taken into account in reckoning the minimum or maximum number of Directors allowed for the time being.

10 Appointment and removal of directors

10.1 At any time and from time to time the Company may by ordinary resolution:

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- 10.1.1 appoint persons who are willing to act as non-executive members of the board of Directors ("**Non-Executive Directors**");
- 10.1.2 designate a Non-Executive Director to act as chairman of the board of Directors (the "**Chairman**"); and
- 10.1.3 remove from office any person appointed in accordance with Article 10.1.1 or 10.1.2.
- 10.2 At any time and from time to time the Non-Executive Directors may by resolution:
- 10.2.1 appoint a person who is willing to act as an Executive Director, either to fill a vacancy or as an additional Executive Director but provided that the number of Executive Directors shall not at that time exceed the number of Non-Executive Directors; and
- 10.2.2 remove from office any person appointed in accordance with Article 10.2.1.
- 10.3 The office of a Director shall be vacated if:-
- 10.3.1 he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a Director; or
- 10.3.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- 10.3.3 he is, or may be, suffering from mental disorder and either:-
- 10.3.3.1 he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1984, or
- 10.3.3.2 an order is made by a Court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
- 10.3.4 he resigns his office by notice to the Company; or
- 10.3.5 he shall for more than six consecutive months have been absent without permission of the Directors from meetings of Directors held during that period and the Directors resolve that his office be vacated.

11 Remuneration of directors

- 11.1 The Company shall from time to time determine in general meeting the remuneration of the Directors or the process by which the remuneration of the Directors shall be determined.

12 Directors' expenses

- 12.1 The Directors (including Alternate Directors) may be repaid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or in connection with the business of the Company.
- 12.2 Any Director who, being so requested by the Directors, performs special or extraordinary services on behalf of the Company, or who, for the purpose of discharging his duties, travels to or resides in any place other than that in which he usually resides may be paid such extra remuneration (whether by way of lump sum, commission or participation in profits or otherwise) as the Directors may determine.

13 Directors' gratuities and pensions

- 13.1 The Directors may grant retirement pensions or annuities or other gratuities or allowances including allowances on death, to any persons or to the widow or dependants of any person in respect of services rendered by him to the Company in any office or employment under the Company or indirectly as an officer or employee of any subsidiary company of the Company, notwithstanding that he may be or may have been a Director of the Company, and the Company may make payments towards insurances or trusts for such purposes in respect of such person and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such person

14 Proceedings of directors

- 14.1 A resolution of which any Director has signified his approval by letter, facsimile message or electronic communication shall be as valid and effectual as a resolution in writing signed by that Director.
- 14.2 The Directors shall:
- 14.2.1 ensure that the Company's external borrowings do not exceed such limits as are set out by ordinary resolution of the members for each year running from 1 April to 31 March;
- 14.2.2 obtain the approval of the members by ordinary resolution to all proposed capital expenditure projects above such levels as may be set from time to time by the

members by ordinary resolution. Any request for such approval shall be supported by a full economic appraisal; and

14.2.3 manage the Company's affairs in accordance with a management statement and financial memorandum as determined by members from time to time.

15 Directors' Meetings

15.1 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit.

15.2 A meeting of the Directors, or of a committee of the Directors, may be held either in person or by conference call, live video link, or any other suitable means agreed between the Directors or committee of Directors in which all participants may communicate simultaneously with all other participants. A Director taking part in a meeting by conference call, live video link or any other suitable means determined by the Directors or committee of Directors shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating in the meeting is assembled, or, if there is no such group, where the Chairman of the meeting is. The word "meeting" when referring to a meeting of the Directors, or of a committee of the Directors, in these Articles shall be construed accordingly.

15.3 The Chairman shall preside at every meeting of the Directors at which he is present. If the Chairman is not present at a meeting of the Directors within five minutes after the time appointed for the meeting, the Non-Executive Directors present shall appoint one of their number to be chairman of the meeting.

15.4 Subject to Article 15.5, a meeting of the Directors shall be quorate only if at least one Non-Executive Director and at least one Executive Director are present. An Alternate Director shall be counted for the purpose of reckoning whether a quorum is present at any meeting of the Directors attended by him at which he is entitled to vote.

15.5 If no Executive Directors have been appointed or hold office at the time of the meeting, the quorum for a meeting of Directors shall be one.

15.6 Questions arising at any meeting of the Directors shall be decided by a majority of votes. Subject to Articles 15.7, 15.8 and 15.9, each Executive Director and Non-Executive Director shall have one vote.

15.7 If the number of Non-Executive Directors present and entitled to vote ("**X**") is less than the number of Executive Directors present and entitled to vote ("**Y**"), the Chairman shall have, in addition to his own vote, a further number of votes equal to **Y-X**.

15.8 If in any case the application of Articles 15.6 and 15.7 results in an equality of votes, the Chairman shall have an additional, casting, vote.

15.9 If in any case the Chairman (or, if the Chairman is absent, the person appointed to chair the meeting pursuant to Article 15.3) is not entitled to vote, the remaining Non-Executive Directors present shall appoint from their number a person who is entitled to vote (the "**Replacement Chairman**") and the provisions of Articles 15.7 and 15.8 shall apply to the Replacement Chairman as they apply to the Chairman *mutatis mutandis*.

16 Winding-up

16.1 If the Company shall be wound up the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall first be applied in repaying to the members the amounts paid or credited as paid on the shares held by them respectively and the balance (if any) shall be distributed among the members in proportion to the number of shares held by them respectively; Provided always that the provisions hereof shall be subject to the rights of the holders of shares (if any) issued upon special conditions.

17 Indemnity

17.1 Subject to the provisions of the Act but without prejudice to any indemnity which may otherwise be available, every Director, Managing Director, Auditor, Secretary or other officer of the Company shall be entitled to be indemnified by and out of the assets of the Company against:-

17.1.1 all charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or in relation thereto; and

17.1.2 any liability incurred by him in:-

17.1.2.1 defending any proceedings, whether civil or criminal, in which judgement is not given against him; or

17.1.2.2 in connection with any application in which relief is granted to him by the Court from liability for negligence, breach of duty or breach of trust in relation to the affairs of the Company.

17.2 The Company may purchase and maintain for any officer or auditor of the Company insurance against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

Name and address of Subscriber

Name and address of Subscriber
Scottish Ministers St. Andrew's House Regent Road Edinburgh EH1 3DG
Signature: " <i>Stella Manzie</i> " For and on behalf of the Scottish Ministers
Before this witness: - ... " <i>Alistair Brown</i> " (sign) ... " <i>Alistair Brown</i> " (print name) ... " <i>Room 3B 77</i> " (address) ... " <i>Victoria Quay</i> " " <i>Edinburgh EH6 6QQ</i> "

Dated: "9 September" 2008

PART 3: FINANCIAL MEMORANDUM

1. BUDGETING PROCEDURES

Scottish Government Expenditure on SFT
Setting the annual fees
Transfers of budgetary provision
End-year flexibility
Authority to spend

2. SFT'S INCOME

Service Payments
Borrowing
Maximising income from other sources
Receipts from the EC
Fees and charges
Receipts from the sale of goods and services
Interest earned
Proceeds from the disposal of assets
Gifts, bequests and donations
Unforecast changes in in-year income

3. SFT'S EXPENDITURE: GENERAL PRINCIPLES

Delegated authority
Appraisal and Evaluation
Procurement
Competition
Value for money
Timeliness in paying bills
Novel, contentious or repercussive proposals
Risk management

4. EXPENDITURE ON BOARD MEMBERS

5. EXPENDITURE ON STAFF

Staff costs
Pay and conditions of service
Pensions, redundancy/compensation

6. NON-STAFF EXPENDITURE

Capital expenditure
Lending, guarantees, indemnities, contingent liabilities, letters of comfort
Grant or loan schemes

Gifts made, write-offs, losses and special payments
Leasing
Public/Private Partnerships
Subsidiary companies and joint ventures
Financial investments
Unconventional financing
Commercial insurance

7. MANAGEMENT AND DISPOSAL OF ASSETS

Register of assets
Disposal of assets
Recovery of Scottish Government financed assets

8. BANKING

APPENDIX B

Specific limits on delegated authority

1. BUDGETING PROCEDURES

Scottish Government Expenditure on SFT

1.1 The SG is a customer of SFT. Fees for SFT services form part of the SG's resource DEL. Net lending by the SG to SFT and any borrowing in the market by SFT – including on balance sheet PPP – would score against the SG's capital DEL.

Setting the annual fees

1.2 Each year the SFT will publish its annual Business Plan setting out its priorities for the year based on its Corporate Plan (paragraph 4.1 of the management statement) and policies/priorities in relation to infrastructure investment.

1.3 Following publication of its Business Plan, SFT will propose to the Directorate a range of services (aligned with the Business Plan) that it will deliver to the SG over the following year, in the form of a draft Services Agreement. The draft Services Agreement will also contain a budget estimate of payments and receipts together with a profile of expected expenditure, fees to Scottish Government and other income over the year.

Authority to spend

1.4 Once SFT's Services Agreement has been approved by the Directorate, and subject to any restrictions imposed by Scottish Ministers and/or the MSFM, SFT will have authority to incur expenditure / consume resources without further reference to the Directorate, on the following conditions:

- i. SFT shall comply with the specific delegations set out in Appendix 1. These delegations shall not be altered without the prior agreement of the Directorate;
- ii. SFT shall comply with the conditions set out in this financial memorandum regarding novel, contentious or repercussive proposals;
- iii. inclusion of any planned and approved expenditure in SFT's budget shall not remove the need to seek formal Directorate approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed;
- iv. SFT shall provide the Directorate with such information about its operations, performance, individual projects and services delivered as set out in the Services Agreement; and

-
- v. SFT shall, with the approval of the Directorate, establish a scheme of delegated authority. These delegations will not be altered without the prior agreement of the Directorate.

2. SFT'S INCOME

Service Payments

2.1 Service payments will normally be made to SFT in quarterly instalments in advance, on the basis of a valid VAT invoice from SFT showing details of services to be delivered and costs which will be incurred. The supporting documentation shall provide the Directorate with, as a minimum, information which will enable the satisfactory monitoring by the Directorate of:

- i. SFT's cash management; and
- ii. actual and forecast outturn of expenditure against budget.

2.2 Cash balances accumulated during the course of the year from Scottish Government payments shall be kept at the minimum level consistent with the efficient operation of SFT.

Borrowing

2.3 Borrowing cannot be used to increase SFT's spending power for running costs. All borrowing by SFT - excluding agreed overdrafts - shall be with the prior agreement of the Directorate.

Maximising Income from Other Sources

2.4 SFT shall seek to maximise income from other sources provided that this is consistent with SFT's main functions and its corporate plan as agreed by the Scottish Ministers.

Receipts from the EU

2.5 SFT should ensure that the sponsoring Directorate is informed of all potential EU funding.

Fees and charges

2.6 SFT may charge for its services only on the basis that it does not compete with private sector providers and respects competition law. Any proposals to charge bodies other than the Scottish Government for services should be agreed in advance with the Directorate through the annual business plan on a generic basis or on a case-by-case basis as required.

Receipts from sale of goods or services

2.7 Receipts from the sale of goods and services, rent of land, and dividends may be used to provide additional spending power subject to their being included in the approved budget.

Interest earned

2.8 Interest earned by SFT on cash balances may be used to provide additional spending power subject to it being included in the approved budget .

Proceeds from disposal of assets

2.9 Disposals of land and buildings are dealt with in Section 7 below.

Gifts, bequests and donations

2.10 SFT is free to retain any gifts, bequests or similar donations. These shall be treated as receipts that, where appropriate, can be used to increase spending power.

2.11 Before proceeding in this way, SFT shall consider if there are any associated costs in doing so or any conflicts of interests arising. SFT shall keep a written record of any such gifts, bequests and donations and of their estimated value and whether they are disposed of or retained.

3. SFT's EXPENDITURE: GENERAL PRINCIPLES

Delegated Authority

3.1 SFT shall not, without prior approval of the Directorate, enter into any undertaking to incur any expenditure, which falls outside the specific limits on SFT's delegated authority as set out in the attached Appendix.

Appraisal and Evaluation

3.2 All expenditure proposals shall, so far as appropriate, be subject to appropriate appraisal prior to commitment and evaluation after the event.

Procurement

3.3 Procurement should be treated as a key component of achieving SFT's objectives, as well as a means of finding the most cost-effective method for securing the quality of assets and/or services. SFT shall also ensure that it complies with any relevant EU or other international procurement rules.

Competition

3.4 Goods and services should be acquired by competition unless there are convincing reasons to the contrary. Subject to any relevant legal obligations, for example under the EU rules, the form of competition should be appropriate to the value and complexity of the goods or services to be acquired. Proposals to let single-tender or restricted contracts above the relevant delegated limit in the attached Appendix must be submitted to the sponsor Directorate for approval.

Value for Money

3.5 Procurement by SFT of works, equipment, goods and services shall be based on value for money, i.e. quality (in terms of fitness for purpose) and delivery against price. Where appropriate, a full option appraisal shall be carried out before procurement decisions are taken.

Timeliness in Paying Bills

3.6 SFT shall pay all matured and properly authorised invoices in accordance with the guidance in the SPFM, including, as far as practicable, observing the target for the payment of invoices within 10 working days of their receipt.

Novel, Contentious or Repercussive Proposals

3.7 SFT shall obtain the approval of the Directorate before:

- i. incurring any expenditure for any purpose which is or might be considered novel or contentious, or which has or could have significant future cost implications, including on staff benefits;
- ii. making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the Directorate;
- iii. making any change of policy or practice which has wider financial implications (e.g. because it might prove repercussive among other public sector bodies) or which might significantly affect the future level of resources required.

Risk Management

3.8 SFT shall ensure that the risks which it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and adopt an appropriate risk management strategy.

3.9 SFT shall adopt and implement appropriate policies and practices to safeguard itself against fraud and theft.

3.10 SFT shall take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract or to which it intends to give grant or grant in aid.

3.11 SFT will review identified risks with the Directorate on a yearly basis.

4. EXPENDITURE ON BOARD MEMBERS

4.1 Remuneration, allowances and expenses paid to Board Members must comply with specific guidance on such matters issued by the Scottish Ministers.

5. EXPENDITURE ON STAFF

Staff Costs

5.1 SFT is responsible for determining the number of staff required and the most appropriate organisational structure to deliver its remit economically, efficiently and effectively within the resources available to it. However, any significant changes in staff numbers or organisational structure must be notified in advance to the Directorate.

Pay and Conditions of Service

5.2 SFT will notify the Directorate of its staff remuneration, including the detail of its performance incentive scheme, on an annual basis. SFT shall comply with the EU directive on contract workers “Fixed Term Employees Regulations (Prevention of Less Favourable Treatment)”.

Pensions; Redundancy / Compensation

5.3 Pension arrangements for staff are subject to the approval of the Directorate. SFT staff shall normally be eligible for a pension provided by SFT.

5.4 Staff may opt out of the pension scheme provided by SFT. Any employer’s contribution to a personal pension or other pension arrangement outside the scope of that approved generically by the Directorate shall be subject to individual specific approval of the Directorate.

5.5 Any proposal by SFT to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, or enter into arrangements that could lead to such payments in the future (See section 3.7 above), requires the advance approval of the Directorate. Proposals on severance payments must comply with guidance in the SPFM.

6. NON-STAFF EXPENDITURE

Capital expenditure

6.1 All expenditure on the acquisition or creation of fixed assets will be capitalised on an accruals basis in accordance with the accounting standards adopted by SFT. Expenditure to be capitalised will include the (a) acquisition, reclamation or laying out of land; (b) acquisition, construction, preparation or replacement of buildings and other structures or their associated fixtures and fittings; and (c) acquisition, installation or replacement of movable or fixed plant, machinery, and vehicles.

6.2 Proposals for large-scale individual capital projects or acquisitions will normally be considered within SFT's corporate planning process and within the context of its long-term estate strategy. Individual capital projects or acquisitions are subject to specific delegated limits (see paragraph 1.7(i)).

Lending, guarantees, indemnities, contingent liabilities, letters of comfort

6.3 SFT shall not, without the Directorate's prior consent, lend money, charge any asset or security, give any guarantee - excluding a guarantee of a standard type given in the normal course of business - or indemnity or letter of comfort, or incur any other contingent liability², whether or not in a legally binding form.

Grant schemes

6.4 Unless covered by a delegated authority, all proposals to make a grant to a third party, whether one-off or under a scheme, shall be subject to prior approval by the Directorate, together with the terms and conditions under which such grant or loan is made. See also below under the heading Recovery of Scottish Government - financed assets.

Gifts made, write-offs, losses and special payments

6.5 Proposals for making gifts or other special payments (including write-offs) outside the delegated limits agreed with the Directorate (see 1.7(i)) must have the prior approval of the Directorate.

Leasing

6.6 Prior approval from the Directorate must be secured for all property and finance leases which are in substance borrowing. Before entering into any lease

² Contingent Liability means: a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence of one or more uncertain future events not wholly within the entity's control; or a present obligation that arises from past events but is not recognised because it is not probable that a transfer of economic benefits will be required to settle the obligation; or the amount of the obligation cannot be measured with sufficient reliability.

(including an operating lease) SFT must demonstrate that the lease offers better value for money than purchase.

Public/Private Partnerships

6.7 SFT shall seek opportunities to enter into Public/Private Partnerships where this would be more affordable and offer better value for money than conventional procurement. Where cash flow projections may result in delegated authority being breached SFT will consult the Directorate. Any partnership controlled by SFT will be accounted for in accordance with the applicable accounting conventions.

Subsidiary companies and joint ventures

6.8 SFT shall not establish subsidiary companies or joint ventures without the express approval of the Directorate. In judging such proposals the Directorate will have regard to the Scottish Ministers' wider strategic aims and objectives.

6.9 Accounting arrangements for any subsidiary company or joint venture controlled or owned by SFT should be agreed in advance with the Directorate. Unless specifically agreed with the Directorate public sector classified subsidiary companies or joint ventures shall be subject to the controls and requirements set out in the MSFM.

Financial investments

6.10 SFT shall not make any investments without the prior approval of the Directorate, nor will it aim to build up cash balances or net assets in excess of what is required for operational purposes. Equity shares in ventures, which further the objectives of SFT, shall equally be subject to Directorate approval unless covered by a specific delegation.

Unconventional financing

6.11 Unless otherwise agreed with the Directorate, SFT will not enter into any unconventional financing arrangement.

Commercial insurance

6.12 SFT may only take out commercial insurance, without the prior approval of the Directorate, where required to do so by law e.g. third party insurance required by the Road Traffic Acts. In the event of losses arising under the Scottish Government's policy of self-insurance the Directorate shall consider, on a case by case basis, whether or not it should make any additional resources available to SFT and/or agree adjustments to the targets in the corporate plan.

7. MANAGEMENT AND DISPOSAL OF ASSETS

Register of assets

7.1 SFT shall maintain an accurate and up-to-date register of its assets.

Disposal of assets

7.2 SFT shall dispose of assets which are surplus to its requirements and in accordance with its long-term estate strategy. Assets shall be sold for the best price, taking into account any costs of sale and in accordance with guidance in the SPFM. Proceeds from the disposal of assets may be retained by SFT subject to them being included in the approved budget.

Recovery of Scottish Government financed assets

7.3 Where SFT has financed expenditure on capital assets by a third party, SFT shall make appropriate arrangements to ensure that any such assets above an agreed value are not disposed of by the third party without SFT's prior consent. SFT shall therefore ensure that such conditions are sufficient to secure the repayment of its due share of the proceeds – or an appropriate proportion of them if the contribution was for less than the whole cost of acquisition or improvement.

7.4 SFT shall also ensure that if the assets created by contributions made by SFT cease to be used by the recipient of the contribution for the intended purpose an appropriate proportion of the value of the asset shall be repaid to SFT.

8. BANKING

8.1 SFT's Chief Executive is responsible for ensuring that SFT has appropriate banking arrangements. In particular, he/she shall ensure that the arrangements safeguard public funds and are carried out efficiently, economically and effectively. These arrangements shall be suitably structured and represent value-for-money, and be reviewed at least every two years, with a comprehensive review, at least every three to five years.

APPENDIX B

SPECIFIC LIMITS ON DELEGATED AUTHORITY

	Amount	Notes
Single-tender contracts	£10k	
Investment projects	Unlimited for agreed budgeted projects £0 for non-budgeted investments	See para 6.2 of the MSFM.
Acquisition of assets	Unlimited for agreed budgeted acquisitions	It is important that the Scottish Government Finance Directorate is informed through the accounts of any acquisition of assets.
	£100k for non-budgeted acquisitions	
Grant scheme	£100k	
Claims waived or abandoned	£20k	
Write-off of losses	£20k	
Special Payments	£Nil	
Lending	Unlimited for agreed budgeted projects	
Leases	Unlimited for agreed budgeted projects	
Investments	Unlimited for agreed budgeted projects	