

STATEMENT BY THE GSLP/LIBERAL OPPOSITION No100/2009

Opposition Press Release 100/2009 - The Opposition renews its call for forensic audit of Haymills and call for an investigation of Haymills and OEM under Companies Act powers

The Opposition is surprised that the GSD Government has not yet felt it necessary to clarify publicly whether or not it supports our call for a Forensic Audit of the payments made to Haymills.

The information provided to the Opposition suggests that Haymills in Gibraltar recently received a large cash sum from Government. This represented the retention of 5% that the Government was withholding until completion of the project. Such sums are never usually released until a project is finished and the cash can be used to make good any repairs if the developer and the builder were to disagree about the requirements for this.

The taxpayer is entitled to know if it is true that the Government released this retention monies to Haymills and, if so, what amount this sum represented and why Government considered that such a release of cash was prudent. Suppliers to Haymills who have not been paid and are now creditors of the company, will also - rightly - want to know what this public money has been used for if it has not been used to pay suppliers.

Moreover, despite the appointment of a Liquidator to address the legal and commercial aspects of this liquidation, the Government surely has an obligation to also investigate the affairs of Haymills to ascertain that this company - which was ultimately almost exclusively working on public projects funded with taxpayers money - was run in the public interest.

If it is true, as reported to the Opposition, that the Government had also recently started paying Haymills £50,000 per month, that too must be accounted for; not just to creditors - which is what the Liquidator is there for - but to the public, as it is public money and a public project that is at stake.

It will also be recalled by the general public that the plots for Haymills to build affordable housing on, were handed to OEM free of charge as part of a package where OEM paid only for the land where it was to develop luxury properties. That company is also now in liquidation. Given that the relevant OEM entity was developing low cost housing on plots it got for nothing from the GSD with monies lent to it by a high street bank with the backing of the Government, it is surprising that it should have failed.

The Governor previously had a power to investigate companies to see if they had been run in the public interest. This power is now in the hands of Mr Caruana as Minister for Finance and is contained in paragraph 2(2)(e) of Schedule 10 of the

Companies Act. The Opposition calls on the present Chief Minister, as Minister for Finance to order an investigation into both Haymills Gibraltar (and any of its subsidiaries) and the relevant OEM entity/ies to determine if these companies have acted in the public interest in the administration of tax payers money and public assets respectively.

This investigation should include the Forensic Audit tracking down all monies paid by the tax payer in respect of these projects.

Shadow Minister for Financial Services, Fabian Picardo, said: "The Government owes it to the tax payer to agree to carry out this audit and investigation which goes beyond the remit of a liquidator that looks after the interests of creditors. I cannot think of any reasonable motive for Government not to agree to this responsible move."

NOTES TO EDITORS:

The full text of Schedule 10 of the Companies Act is available on the following link from the Government website:

<http://www.gibraltarlaws.gov.gi/articles/1930-07o.pdf>

The relevant pages are 339 to 352. Here editors will be able to see the circumstances when an investigation can be ordered and the powers of an inspector once such an investigation is ongoing.

Specifically, the relevant provisions of Paragraph 2 (2) and (3) of Schedule 10 of the Companies Act reads as follows:

"SCHEDULE 10

INVESTIGATION OF COMPANIES AND THEIR AFFAIRS:

Other company investigations.

2. (2) The Minister responsible for finance may make such an appointment if it appears to him that there are circumstances suggesting-

(a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or

(b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or

(c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or

(d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect, or

(e) that the company's affairs are being or have been conducted in a manner detrimental to the reputation of Gibraltar as a financial centre or otherwise contrary to the public interest.

(3) Subparagraphs (1) and (2) are without prejudice to the powers of the Minister responsible for finance under paragraph 1; and the power conferred by subparagraph (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up."

For further information and comment: Fabian Picardo on + 350 200 47786.

Ends