

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Implementation of FIDC Ordinance 2013 Subsidiary Legislation

Paper No: 115/13

Date: 24 April 2013

Report of: FIDC GM – Marc Boucher

1. Purpose

- 1.1 The purpose of this Paper is to request the approval of EXCO of the process for appointment of a selection panel for the appointment of Falkland Islands Development Corporation (FIDC) Board members and the application of transitional provisions for FIDC.

2. Recommendations

- 2.1 Executive Council is recommended to advise the Governor to issue a notice (for publication in the *Gazette*) appointing the date on which the notice is published as the date on which:

- a) section 26(2) of the Falkland Islands Development Corporation Ordinance comes into force; and
- b) the Falkland Islands Development Corporation (Transitional Provisions) Order comes into force.

- 2.2. Executive Council is also recommended to advise the Governor to issue a notice (for publication in the *Gazette*) appointing 1 July 2013 as the date on which:

- a) the remainder of the Ordinance comes into force; and
- b) the following items of subsidiary legislation come into force:
 - (i) Falkland Islands Development Corporation (Contracts and Sealing) Regulations 2013;
 - (ii) Falkland Islands Development Corporation (Reserve Powers) Regulations 2013;

- (iii) Falkland Islands Development Corporation (Appointment, Co-option and Removal of Board Members) Regulation 2013

2.3 Executive Council is recommended to advise the Governor to appoint a selection panel for the FIDC Board that consists of:

- (a) Four private sector representatives, one to be nominated by each of the private sector bodies currently represented on the FIDC Board (Chamber of Commerce, FIFCA, FITB and RBA); and
- (b) Four representatives to be nominated by FIG.”

3. Summary of Financial Implications

None

4. Background

4.1 At its meeting of 23 January 2013 Executive Council considered and approved the presentation of the Falkland Islands Development Corporation Bill to the Legislative Assembly of February 2013;

4.2 The Falkland Islands *Gazette* Supplement (Vol.24 No.3) which was published on 23 February 2013 contained the Falkland Islands Development Corporation Ordinance 2013 (No 4 2012).

4.3 In order to proceed according the recommendations made to Executive Council in ExCo Paper 30/13, supporting subsidiary legislation is required in order to ensure the appropriate legislative context be applied in the transition of the Falkland Islands Development Corporation Ordinance 2013, which are the following;

- a) Falkland Islands Development Corporation (Transitional Provisions) Order 2013 (S.R. & O. No: 6 of 2013), which covers;

- (i) Transition from the old Board to new Board
- (ii) Managing Director
- (iii) Financial Controller
- (iv) Secretary
- (v) Employees
- (vi) Property and contracts

- b) Falkland Islands Development Corporation (Contract and Sealing) Regulations (S.R. & O. No: 7 Of 2013), which covers;

- (i) Contracts: formalities
- (ii) Sealing of documents
- (iii) Presumption of proper execution

c) Falkland Islands Development Corporation (Reserve Powers) Regulations 2013 (S.R. & O. No: 8 2013), which covers;

- (i) Circumstances in which reserve powers may be exercised
- (ii) Reserve powers

d) Falkland Islands Development Corporation (Appointment, Co-option and Removal of Board Members) Regulations 2013 (S.R. & O. No: 9 of 2013), which covers;

- (i) Appointments
- (ii) Co-options
- (iii) Removal

4.4 On 8 April 2013 the Governor signed the above subsidiary legislation and now requires publication in the Falkland Islands *Gazette* of same to ensure that the Falkland Islands Development Corporation Ordinance and subsidiary legislation is in place for the 1 July 2013, to coincide with the start of the new financial year and provide sufficient time to initiate the appointment of the new FIDC Board.

4.5 As identified in the Falkland Islands Development Corporation (Transitional Provisions) Order 2013, the transition from the old Board to the new Board must follow a prescribed method, which includes the appointment of the selection panel by the Governor. The appointment panel will make recommendation to Executive Council for the appointment of the Chair and Vice Chair of the FIDC Board and one other member of the FIDC Board.

4.6 FIDC General Manager has consulted with industry and business association which have presently assigned representation on the existing Falkland Islands Development Board, which include; Falkland Islands Chamber of Commerce, Falkland Islands Tourism Board, Rural Business Association and Falkland Islands Companies Association. All have agreed to provide one member which will represent them on the selection panel. In addition, all have agreed that representatives of the Falkland Islands Government should be part of the selection panel as well. It is considered that there should be four representatives from FIG, as well as the four private sector representatives.

4.7 Although the representatives have not yet been nominated, Executive Council is asked to advise the Governor to appoint them to the selection panel when they are nominated.

4.8 FIDC staff will provide secretariat functions for the panel.

5. Financial Implications

There are no financial implications at this time.

6. Legal Implications

There are no legal implications for FIG or FIDC at this time.

7. Human Resources Implications

There are no human resources implications for FIG or FIDC at this time.

Appendices

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Appendix B – Falkland Islands Development Corporation (Transitional Provisions)
Order 2013

Appendix C – Falkland Islands Development Corporation (Contracts and Sealing)
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Appendix E – Falkland Islands Development Corporation (Appointment, Co-option
and Removal of Board Members) Regulations 2013

ELIZABETH II



FALKLAND ISLANDS

NIGEL ROBERT HAYWOOD C.V.O.,
Governor.

Falkland Islands Development Corporation Ordinance 2013

(No: 4 of 2013)

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ELIZABETH II



FALKLAND ISLANDS

NIGEL ROBERT HAYWOOD C.V.O.,
Governor.

FALKLAND ISLANDS DEVELOPMENT CORPORATION ORDINANCE 2013

(No: 4 of 2013)

(assented to: 26 February 2013)

(commencement: see section 2)

(published: 28 February 2013)

AN ORDINANCE

To provide for the Falkland Islands Development Corporation to continue in existence as a body corporate; to make new provision for its purposes, management, operations and internal governance; and for connected purposes.

ENACTED by the Legislature of the Falkland Islands —

PART 1
INTRODUCTION

1. Title

This Ordinance is the Falkland Islands Development Corporation Ordinance 2013.

2. Commencement

(1) This Ordinance comes into force on a date appointed by the Governor by notice published in the *Gazette*.

(2) The Governor may appoint different dates for different provisions to come into force.

3. Interpretation

In this Ordinance —

“delegated authority” means authority in relation to a function of the FIDC Board that has been delegated under section 18(1);

“FIDC” means the body corporate known as the Falkland Islands Development Corporation that —

(a) was originally established by section 3 of the Falkland Islands Development Corporation Ordinance (Title 28.1); and

(b) continues in existence under section 4 of this Ordinance;

“FIDC Board” means the board provided for in section 7;

“Financial Controller” means the person appointed as Financial Controller under section 12;

“Managing Director” means the person appointed as Managing Director under section 11(1);

“Manual” means the Manual about policies and procedures provided for in section 17;

“MLA” means either —

(a) an elected member of the Legislative Assembly; or

(b) during the period between a dissolution of the Legislative Assembly and the next meeting of the Legislative Assembly after that dissolution, a person who was an elected member of the Legislative Assembly immediately before that dissolution took place; and

“Secretary” means the person appointed as Secretary under section 14(1).

PART 2 FIDC’S CORPORATE STATUS

4. Continued existence of FIDC as body corporate

FIDC continues to be a body corporate.

5. Further provisions about FIDC’s corporate status

Schedule 1 contains further provisions about FIDC’s corporate status.

PART 3 FIDC’S PURPOSES

6. FIDC’s purposes

FIDC’s purposes are —

(a) to advise on and implement the economic strategies of the Falkland Islands Government; and

(b) to take what further steps are required to ensure the successful development of businesses and a positive business environment in the Falkland Islands.

PART 4

FIDC BOARD

7. FIDC Board

Overall management of FIDC and its affairs is to be exercised by a board, to be known as either the Falkland Islands Development Corporation Board or the FIDC Board.

8. Board members (with power to vary numbers)

(1) The members of the FIDC Board are to be as follows —

- (a) an appointed Chair;
- (b) an appointed Vice-Chair;
- (c) one appointed member;
- (d) one MLA, nominated by MLAs collectively;
- (e) the Chief Executive; and
- (f) up to 4 co-opted members.

(2) In subsection (1) —

“appointed” means appointed by the Governor; and

“co-opted” means co-opted by the FIDC Board.

(3) The Governor may amend subsection (1) by order to vary the following numbers —

- (a) the number of members to be appointed under subsection (1)(c);
- (b) the number of MLAs to be nominated under subsection (1)(d);
- (c) the maximum number of co-opted members specified in subsection (1)(f).

9. Appointments and co-options: further provisions

(1) Appointments may only be made following a fair, objective and transparent process.

(2) When co-opting members, the FIDC Board must ensure that —

- (a) there is adequate consultation with each significant commercial sector of the Falkland Islands economy (which may include consultation with bodies representing them); and
- (b) each of those sectors will be represented on the FIDC Board (whether by appointment or co-option) by a person with suitable knowledge and experience of it.

(3) The Governor may make regulations about —

(a) the periods for which members are appointed or co-opted to the FIDC Board (which may be different for different members or categories of members);

(b) the extent to which the terms for which members of the FIDC Board serve are to be staggered.

10. Further provisions about the FIDC Board

Schedule 2 contains further provisions about the FIDC Board, its members and its procedures.

PART 5 FIDC EMPLOYEES

11. Managing Director

(1) The FIDC Board must appoint a person to be the Managing Director of FIDC.

(2) The FIDC Board is responsible for ensuring that there is a fair, objective and transparent process for the appointment of the Managing Director.

12. Financial Controller

FIDC must have a Financial Controller appointed —

(a) either by the FIDC Board or under delegated authority; and

(b) in accordance with applicable requirements in the Manual.

13. Other FIDC employees

Apart from the Managing Director and the Financial Controller, other FIDC employees may be appointed —

(a) either by the FIDC Board or under delegated authority; and

(b) in accordance with applicable requirements in the Manual.

14. Secretary

(1) The FIDC Board must appoint a person to be the Secretary of FIDC.

(2) In addition to functions given to the Secretary by this Ordinance (or subsidiary legislation made under it), the Secretary must carry out corporate functions and duties as directed, either by the FIDC Board or under delegated authority.

15. Further provisions about FIDC employees

Schedule 3 contains further provisions about FIDC employees.

PART 6 INTERNAL GOVERNANCE

16. Duties to ensure good corporate governance

(1) The FIDC Board is under a duty to ensure the good corporate governance of FIDC.

(2) The FIDC Board is also under a duty to ensure that FIDC exercises its powers in ways that are —

(a) consistent with —

(i) this Ordinance;

(ii) subsidiary legislation made under it; and

(iii) the policies and procedures set out in the Manual; and

(b) economical, efficient and effective.

17. Manual of policies and procedures

The FIDC Board is under a duty to adopt (and keep under review) a Manual detailing the policies and procedures for FIDC's internal governance.

18. Delegation of functions (delegated authority)

(1) The Board may delegate authority in relation to some or all of its functions (either on specific occasions or generally) to the extent that the delegation is not inconsistent with applicable requirements in the Manual.

(2) When delegating authority, the Board may —

(a) impose limits or conditions on the exercise of that delegated authority; and

(b) allow for delegated authority to be delegated further (and may impose limits or conditions on that further delegation).

(3) Anything done under delegated authority is as valid and effective as if it had been done by the Board directly.

PART 7 FINANCIAL PROVISIONS

19. Business plan and budget (with power to vary size of variation to budget for which approval required)

(1) The FIDC Board is under a duty to ensure that —

(a) FIDC has —

(i) a business plan; and

(ii) a budget;

(b) that they are approved by the Governor; and

(c) that they are kept under review.

(2) FIDC must not —

- (a) engage in activities that are not provided for in its business plan; or
- (b) enter into transactions that are not provided for in its budget.

(3) The FIDC Board may vary the business plan or budget (or both of them) without first seeking approval from the Governor (but not if the variation would be significant).

(4) A variation to the budget is to be treated as being one that would be significant if, following the variation, the cumulative change to the budget would be more than 10% from the last budget approved by the Governor.

(5) The Governor may make an order amending subsection (3) to vary the percentage of the maximum cumulative variation allowed before approval must be sought.

20. Subvention requests

(1) The Financial Secretary may invite FIDC in advance of a financial year to submit a request for funds that FIDC requires the Falkland Islands Government to provide so that FIDC can carry out its activities for that financial year.

(2) The Financial Secretary may issue guidelines about —

- (a) how the request must be submitted; and
- (b) how it will be dealt with.

(3) FIDC must submit its request for funds to the Financial Secretary in accordance with guidelines issued by the Financial Secretary.

21. Duty to keep proper financial records

(1) The FIDC Board is under a duty to ensure that proper financial records are kept of FIDC's revenue and expenditure.

(2) The Manual must contain provisions dealing with how those financial records are to be kept.

22. Audit

(1) The FIDC Board is under a duty to ensure that arrangements are in place for FIDC's financial records and statements to be audited.

(2) The arrangements must satisfy the requirements of section 80 of the Constitution.

(3) As far as consistent with those requirements, the arrangements must —

- (a) ensure that FIDC's financial records and financial statements produced from those financial records are audited by an auditor who is —
 - (i) suitably qualified and experienced; and

(ii) external to both FIDC and the Falkland Islands Government (but this does not prevent FIDC and the Falkland Islands Government both being audited by the same external auditor);

(b) provide value for money.

23. Duty to prepare, etc annual report and financial statements

(1) Following the end of each financial year, FIDC must prepare an annual report and financial statements, consisting of —

(a) a report on —

(i) its activities during the financial year; and

(ii) the corporate governance of FIDC during the financial year.

(b) its financial statements for the financial year, which must be audited in accordance with the arrangements made under section 22.

(2) The Secretary must —

(a) send copies of the annual report and financial statements to —

(i) the Governor; and

(ii) the Clerk of the Legislative Assembly; and

(b) arrange for copies of them to be made available to the public.

(3) The Chief Executive must lay copies of the annual report and financial statements on the Table of the Legislative Assembly at its next meeting after they have been sent to the Governor and the Clerk of the Legislative Assembly.

PART 8 RESERVE POWERS

24. Reserve powers

(1) The Governor may make regulations about —

(a) reserve powers that may be exercised in relation to FIDC, its management and activities; and

(b) the circumstances in which those powers may be exercised.

(2) Those regulations may provide for reserve powers to include the power to make further subsidiary legislation.

**PART 9
OTHER SUBSIDIARY LEGISLATION**

25. Other subsidiary legislation

The Governor may make other subsidiary legislation that is necessary or convenient for the purposes of this Ordinance.

**PART 10
REPEAL AND TRANSITIONAL ARRANGEMENTS**

26. Repeal (and power to make transitional arrangements)

(1) The Falkland Islands Development Corporation Ordinance (Title 28.1) is repealed.

(2) The Governor may make subsidiary legislation dealing with arrangements for the transition from the repealed Ordinance to this Ordinance.

**SCHEDULE 1
FURTHER PROVISIONS ABOUT FIDC'S CORPORATE STATUS**

1. FIDC as body corporate

As a body corporate, FIDC may —

- (a) acquire, hold and dispose of real and personal property; and
- (b) sue and be sued.

2. FIDC's powers

(1) FIDC has power to do all things that are necessary or convenient for (or in connection with) fulfilling its purposes.

(2) The Governor may make subsidiary legislation about FIDC's powers and how they are exercised.

3. Corporate seal

(1) FIDC must continue to have a seal (but the Governor may make an order dispensing with this requirement).

(2) Unless the requirement for FIDC to have a seal has been dispensed with —

- (a) the Secretary is to have custody of the seal; and
- (b) the Secretary is under a duty to ensure that the seal is kept safely and securely.

4. Contract formalities, etc

The Governor may make regulations about —

- (a) the formalities required in relation to contracts entered into by FIDC or on its behalf; and
- (b) requirements for authenticating the application of FIDC's seal to documents.

5. FIDC separate from Crown and FIG

(1) FIDC is neither —

- (a) part of either the Crown or the Falkland Islands Government; nor
- (b) a servant or agent of either of them;

(2) FIDC's property is neither —

- (a) property of either the Crown or the Falkland Islands Government; nor
- (b) property held on behalf of either of them.

(3) FIDC does not enjoy any status, immunity or privilege of the Crown.

6. Exclusion of personal liability

(1) Subsection (2) applies to —

- (a) members of the FIDC Board; and
- (b) FIDC employees.

(2) No-one to whom this subsection applies is to be personally liable for anything that person does under the provisions of this Ordinance, provided that it is done —

- (a) in good faith; and
- (b) without negligence.

SCHEDULE 2

FURTHER PROVISIONS ABOUT THE FIDC BOARD AND ITS MEMBERS

1. Power to make regulations about removal of Board members

The Governor may make regulations about the circumstances in which members of the FIDC Board can be removed and the procedures to be followed in those circumstances.

2. Remuneration of Board members

(1) Members of the FIDC Board may be —

- (a) remunerated for their services to FIDC; and
- (b) reimbursed for expenses they incur in the course of their duties.

(2) The remuneration and reimbursement of Board members must be consistent with applicable provisions in the Manual.

3. Code of Conduct

(1) The FIDC Board is under a duty to adopt (and keep under review) a Code of Conduct for members of the FIDC Board.

(2) The Code of Conduct must include provisions dealing with —

- (a) declarations of interests by members of the FIDC Board; and
- (b) the handling of conflicts of interest that they might have.

(3) The Code of Conduct may include different provisions for different categories of Board members.

4. Only Board members may vote

Only members of the FIDC Board may vote on its decisions.

5. Those entitled to attend (and speak at) Board meetings (but not to vote)

(1) The following persons are not members of the FIDC Board but have the right to attend meetings of the Board and to speak at those meetings —

- (a) the Managing Director;
- (b) the Financial Controller; and
- (c) the Financial Secretary (or a representative of the Financial Secretary).

(2) The FIDC Board may invite others to attend (and speak at) one or more of its meetings (or part of a meeting).

6. Those entitled to attend Board meetings (but not to speak or vote)

(1) If the Secretary would not otherwise be entitled to attend a meeting of the Board, the Secretary may attend (but not speak at) the meeting to take the minutes of the meeting.

(2) The FIDC Board may invite another person to attend (but not speak at) one or more of its meetings to take minutes instead of the Secretary.

(3) The FIDC Board may invite others to attend (but not speak at) one or more of its meetings (or part of a meeting).

7. Board procedures

For all other matters, the FIDC Board may adopt its own procedures.

8. Vacancies on Board

(1) The validity of anything done by FIDC Board will not be affected even if there are one or more vacancies on it.

(2) However, that does not allow a meeting to be held without a quorum provided for in the Board's procedures.

SCHEDULE 3
FURTHER PROVISIONS ABOUT FIDC EMPLOYEES

1. Terms and conditions for FIDC employees

(1) The terms and conditions of service of FIDC employees (including the Managing Director) are to be determined —

(a) either by the FIDC Board or under delegated authority; and

(b) in accordance with applicable requirements in the Manual.

(2) If an FIDC employee has a continuing contract with FIDC, that employee's terms and conditions of service may not be varied unless —

(a) the contract allows for variation;

(b) the employee consents (but consent may not unreasonably be withheld); or

(c) the variation is allowed by another provision or rule of law.

2. Job descriptions and person specifications

(1) The FIDC Board is under a duty to adopt (and keep under review) job descriptions and person specifications that are approved by the Governor for key FIDC employees (including the Managing Director and the Financial Controller).

(2) The Governor may by order designate other FIDC employees (in addition to the Managing Director and the Financial Controller) as key ones for whom job descriptions and person specifications must be adopted (and kept under review) by the FIDC Board and approved by the Governor.

3. Employees' interests

(1) The Manual must include provisions about —

(a) declarations of interests by FIDC employees; and

(b) the handling of conflicts of interest that they might have.

(2) The Manual may include different provisions for different categories of employees.

Passed by the Legislature of the Falkland Islands on 21 February 2013.

C. PRIOR M.B.E.,
Clerk of the Legislative Assembly.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

C. PRIOR M.B.E.,
Clerk of the Legislative Assembly.

Published by the Attorney General's Chambers, Stanley, Falkland Islands
Price: Eight pound and twenty pence.

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SUBSIDIARY LEGISLATION

ECONOMIC DEVELOPMENT

Falkland Islands Development Corporation (Transitional Provisions) Order 2013

S. R. & O. No: 6 of 2013

Made: 8 April 2013

Published: April 2013

Coming into force: see article 2

I make the following order under section 26(2) of the Falkland Islands Development Corporation Ordinance (No 4 of 2013) on the advice of Executive Council.

1. Title

This order is the Falkland Islands Development Corporation (Transitional Provisions) Order 2013.

2. Commencement

This order comes into force on a date appointed by the Governor by notice published in the *Gazette*.

3. Interpretation

In this order —

“the old Ordinance” means the Falkland Islands Development Corporation Ordinance 1983 (Title 28.1); and

“the new Ordinance” means the Falkland Islands Development Corporation Ordinance 2013 (No 4 of 2013).

4. Transition from old Board to new Board

(1) Everyone who is a member of the FIDC Board immediately before the new Ordinance comes into force will remain a member of the FIDC Board while the process provided for in this regulation is being followed.

(2) The Governor must appoint a panel to make recommendations about the appointment of the Chair and Vice Chair of the FIDC Board and one other member of the FIDC Board.

(3) The panel must conduct a fair, objective and transparent process before making recommendations to the Executive Council about whom should be appointed to those positions.

(4) Executive Council must either —

- (a) advise the Governor to make the appointments recommended by the panel; or
- (b) request the panel to repeat the process of making recommendations to it.

(5) Either the Chair or the Vice Chair will be appointed until 30 June 2015 and the other will be appointed until 30 June 2017.

(6) The other member of the FIDC Board will be appointed until 30 June 2017.

(7) The first set of co-options to the FIDC Board will not be made by the FIDC Board but will be made by a committee consisting of —

- (a) the person appointed to be the Chair of FIDC;
- (b) the person appointed to be the Vice Chair of FIDC;
- (c) the person appointed to be the other member of the FIDC Board;
- (d) the Chief Executive; and
- (e) one MLA, nominated by MLAs collectively;

(8) That committee will co-opt —

- (a) two persons to be members of the FIDC Board until 30 June 2015; and
- (b) two persons to be members of the FIDC Board until 30 June 2017.

(9) As soon as those co-options have been made —

- (a) the new Board members take office; and
- (b) anyone who was a member of the FIDC Board but who has not been appointed or co-opted will cease to be a member.

5. Managing Director

The person who is the General Manager of FIDC immediately before the new Ordinance comes into force is to be treated as having been appointed as Managing Director under section 11(1) of the new Ordinance.

6. Financial Controller

The person who is the Financial Controller of FIDC immediately before the new Ordinance comes into force is to be treated as having been appointed as Financial Controller under section 12 of the new Ordinance.

7. Secretary

The person who is the Secretary of FIDC immediately before the new Ordinance comes into force is to be treated as having been appointed as Secretary under section 14(1) of the new Ordinance.

8. Employees

(1) Paragraphs (2) and (3) apply to everyone who is an FIDC employee immediately before the new Ordinance comes into effect.

(2) The repeal of the old Ordinance and the coming into force of the new Ordinance does not affect the continuity of their employment with FIDC.

(3) Their terms and conditions of service will remain the same, unless those terms and conditions are later varied in accordance with paragraph 1 of Schedule 3 to the Ordinance.

9. Property and contracts

For the avoidance of doubt, neither FIDC's property nor its contracts are affected by the repeal of the old Ordinance and the coming into force of the new Ordinance.

Made 8 April 2013

N. R. Haywood C.V.O.,
Governor.

EXPLANATORY NOTE *(not part of the order)*

Section 26(1) of the Falkland Islands Development Corporation Ordinance 2013 (No 4 of 2013) ("the new Ordinance") repeals the Falkland Islands Development Corporation Ordinance 1983 (Title 28.1) ("the old Ordinance").

Section 26(2) of the 2013 Ordinance allows the Governor to make subsidiary legislation dealing with the arrangements for the transition from the old Ordinance to the new Ordinance. This Order makes those arrangements.

Article 4 deals with the transition from the existing FIDC Board to the new FIDC Board:

- The existing members of the FIDC Board will continue to hold office until the new members have been appointed and co-opted.
- The Chair, Vice Chair and one other member will be appointed after a recruitment process has been carried out by a panel appointed by the Governor. Those appointments will be staggered, so that one expires in 2015 and the other two expire in 2017.
- The appointed members, a Member of the Legislative Assembly and the Chief Executive of the Falkland Islands Government will form a committee to consult the private sector and co-opt 4 additional members to the FIDC Board. Again, these co-options will be staggered, so that two expire in 2015 and the other two in 2017.
- Once this process is complete, the new Board will take over from the old Board.

Articles 5 to 9 provides for continuity in relation to FIDC's employees (including its employed office-holders:

- under *article 5*, the current General Manager will become the new Managing Director;
- under *articles 6 and 7*, the Financial Controller and Secretary will remain in office;
- under *article 8*, FIDC's other employees will not be affected by the change from the old Ordinance to the new one; and
- under *article 9*, FIDC's property and contracts will not be affected either.

SUBSIDIARY LEGISLATION

ECONOMIC DEVELOPMENT

Falkland Islands Development Corporation (Contracts and Sealing) Regulations

S. R. & O. No: 7 of 2013

Made: 8 April 2013

Published: April 2013

Coming into force: see regulation 2

I make the following regulations under paragraph 4 of Schedule 1 to the Falkland Islands Development Corporation Ordinance (No 4 of 2013) on the advice of Executive Council.

1. Title

These regulations are the Falkland Islands Development Corporation (Contracts and Sealing) Regulations 2013.

2. Commencement

These regulations come into force on a date appointed by the Governor by notice published in the *Gazette*.

3. Contracts: formalities

- (1) This regulation deals with the formalities required for contracts being made by FIDC.
- (2) In the rest of this regulation, making a contract includes varying it or discharging it.
- (3) In the case of contracts being made by deed, FIDC must make them by means of a deed sealed in accordance with regulation 4.
- (4) In the case of contracts being made in writing (but not by deed), FIDC may make them by means of a document signed by a person who has express or implied authority to act on behalf of FIDC.
- (5) In the case of contracts being made in some other way, FIDC may make them through the actions of a person who has express or implied authority to act on behalf of FIDC.

4. Sealing of documents

- (1) FIDC's seal may only be applied to a document under —
 - (a) a resolution of the FIDC Board; or

(b) delegated authority.

(2) Whenever FIDC's seal is applied to a document, it must be authenticated with the signatures of —

(a) the Secretary; and

(b) a member of the FIDC Board.

5. Presumption of proper execution

(1) Paragraph (2) applies to a document if —

(a) it bears an impression of FIDC's seal; and

(b) it has been authenticated as required by regulation 4(2).

(2) If this paragraph applies to a document, that may be relied on as evidence that the document has been properly executed on behalf of FIDC.

Made 8 April 2013

N. R. Haywood C.V.O.,
Governor.

EXPLANATORY NOTE *(not part of the regulations)*

Paragraph 4 of Schedule 1 to the Falkland Islands Development Corporation Ordinance 2013 (No 4 of 2013) allows the Governor to make regulations for the Falkland Islands Development Corporation (FIDC) about contract formalities and the sealing of documents.

These Regulations largely reproduce – but in more up to date language – provisions in the former Falkland Islands Development Corporation Ordinance (Title 28.1) about contracts and sealing. The main change is that the FIDC Board may now delegate its authority to allow FIDC's seal to be applied to a document.

SUBSIDIARY LEGISLATION

ECONOMIC DEVELOPMENT

Falkland Islands Development Corporation (Reserve Powers) Regulations 2013

S. R. & O. No: 8 of 2013

Made: 8 April 2013

Published: April 2013

Coming into force: see regulation 2

I make the following regulations under section 24 of the Falkland Islands Development Corporation Ordinance (No 4 of 2013) on the advice of Executive Council.

1. Title

These regulations are the Falkland Islands Development Corporation (Reserve Powers) Regulations 2013.

2. Commencement

These regulations come into force on a date appointed by the Governor by notice published in the *Gazette*.

3. Interpretation

In these regulations, “PAC” means the Public Accounts Committee established by section 81(1) of the Constitution.

4. Circumstances in which reserve powers may be exercised

(1) The reserve powers in regulation 5 may only be exercised if one or more of the situations listed in this regulation exist.

(2) The first situation in which reserve powers may be exercised exists if the PAC or FIDC’s auditors have recommended that intervention into the management or activities of FIDC is required.

(3) The second situation in which reserve powers may be exercised exists if —

(a) the PAC or FIDC’s auditors have made a recommendation about FIDC, its management or its activities; and

(b) the Governor considers that either —

(i) proper regard is not being had to the recommendation; or

- (ii) appropriate action is not being taken to deal with it;
- (4) The third situation in which reserve powers may be exercised exists if —
 - (a) FIDC's accounts have been qualified by its auditors; and
 - (b) the Governor considers that intervention into the management or activities of FIDC is required to deal with that qualification.
- (5) The fourth situation in which reserve powers may be exercised exists if the Governor (acting with discretion) considers that the interests of good governance require intervention into the management or activities of FIDC.

5. Reserve powers

- (1) If one or more of the situations in which reserve powers may be exercised does exist —
 - (a) the Governor may issue directions to the FIDC Board requiring action to be taken (and the FIDC Board must comply with those directions); and
 - (b) the Governor may make subsidiary legislation to deal with the situation.
- (2) If the fourth situation in which reserve powers may be exercised exists (because the Governor considers that the interests of good governance require intervention), the Governor may act with discretion in relation when deciding whether (and, if so, how) to exercise reserve powers under paragraph (1).

Made 8 April 2013

N. R. Haywood C.V.O.,
Governor.

EXPLANATORY NOTE *(not part of the regulations)*

Section 24 of the Falkland Islands Development Corporation Ordinance 2013 (No 4 of 2013) allows the Governor to make regulations about:

(a) the circumstances in which reserve powers may be exercised in relation to the Falkland Islands Development Corporation (FIDC); and

(b) the reserve powers that may be exercised in those circumstances, about contract formalities and the sealing of documents.

Regulation 4 deals with the circumstances in which reserve powers may be exercised:

- if the Public Accounts Committee (PAC) or FIDC's auditors recommend intervention;
- if the PAC or FIDC's auditors have made a recommendation but the Governor (normally, acting on the advice of Executive Council) considers that not enough is being done to deal with it;
- if FIDC's accounts have been qualified and the Governor (normally, acting on the advice of Executive Council) considers that intervention is necessary to deal with it;
- if the Governor (acting with discretion) considers that good governance requires intervention.

Regulation 5 specifies what reserve powers exist in those circumstances:

- The Governor could issue binding directions to the FIDC Board.
- The Governor could make subsidiary legislation to deal with the situation – section 24(2) of the Ordinance specifically allows for these Regulations to include this further power to make subsidiary legislation.

Normally, the Governor would act on the advice of Executive Council in relation to the exercise of reserve powers. However, *article 5* confirms that the Governor may act with discretion if good governance requires intervention.

SUBSIDIARY LEGISLATION

ECONOMIC DEVELOPMENT

Falkland Islands Development Corporation (Appointment, Co-option and Removal of Board Members) Regulations 2013

S. R. & O. No: 9 of 2013

Made: 8 April 2013

Published: April 2013

Coming into force: see regulation 2

I make the following regulations under section 9(3) of the Falkland Islands Development Corporation Ordinance (No 4 of 2013) and paragraph 1 of Schedule 2 to the Falkland Islands Development Corporation Ordinance on the advice of Executive Council.

1. Title

These regulations are the Falkland Islands Development Corporation (Appointment, Co-option and Removal of Board Members) Regulations 2013.

2. Commencement

These regulations come into force on a date appointed by the Governor by notice published in the *Gazette*.

3. Appointments

(1) The appointed members of the FIDC Board are to be appointed for terms of 4 years, expiring at the end of 30 June in odd numbered years.

(2) The terms of the Chair and the Vice Chair are to expire in alternate odd numbered years.

(3) If an appointment comes to an end before the expiry of the term for it was made, either —

(a) a replacement appointment may be made to that position for the balance of the appointment that came to an end; or

(b) if that would result in an appointment being made for a period of 6 months or less, a replacement appointment may be made to that position until the next date on which an appointment to that position would expire (for a term of up to 4 years and 6 months).

4. Co-options

(1) The co-opted members of the FIDC Board are to be co-opted for terms of 4 years, expiring at the end of 30 June in odd numbered years.

(2) As nearly as possible, half of the co-options are to expire in each alternate odd numbered year.

(3) If a co-option comes to an end before the expiry of the term for it was made, either —

(a) a replacement co-option may be made to that position for the balance of the co-option that came to an end; or

(b) if that would result in a co-option being made for a period of 6 months or less, a replacement co-option may be made to that position until the next date on which a co-option to that position would expire (for a term of up to 4 years and 6 months).

5. Removal of Board members

(1) A person appointed to the FIDC Board by the Governor may only be removed from the Board by the Governor.

(2) A person co-opted to the FIDC Board may only be removed from the Board by a decision of the other members of the FIDC Board.

(3) In either case —

(a) a person may only be removed from the FIDC Board following a fair process appropriate to the circumstances; but

(b) if the circumstances require, the person may be suspended from the FIDC Board while that process is underway.

Made 8 April 2013

N. R. Haywood C.V.O.,
Governor.

EXPLANATORY NOTE *(not part of the regulations)*

Section 9(3) of the Falkland Islands Development Corporation Ordinance 2013 (No 4 of 2013) allows the Governor to make regulations about appointments and co-options to the Board of the Falkland Islands Development Corporation (the FIDC Board).

Paragraph 1 of Schedule 2 to the Ordinance also allows the Governor to make regulations about the removal of Board members.

Regulations 3 and 4 provide for two 4 year cycles for ending on 30 June (the last day of the financial year in alternate odd-numbered years. They also provide that casual vacancies will normally only be filled for the remainder of the term (but there is provision to deal with situations in which the remaining term is 6 months or less).

In other words, a process of appointment and co-option will take every 2 years (in 2015, 2017, etc) and approximately half of the positions on the Board will come up for appointment/co-option on each occasion.