



# Companies Governance Framework

28<sup>th</sup> September 2023

Amended 5<sup>th</sup> November 2023

# WBC Companies Governance Framework

## Introduction

This Framework is owned by the Strategic Director, Corporate Resources who is responsible for keeping it up to date, relevant and accessible and for arranging relevant training for those involved in working with our companies. Any updates required or deemed as helpful are delegated to the Strategic Director, Corporate Resources. Such updates will be reported to the Executive periodically.

The purpose of this Framework is to act as a practical guide for WBC members and officers, and staff and board members of entities in which the council have an interest, in their dealings with each other and with the important business that is conducted by them. An interest, for the purposes of the scope of this manual, applies to any of the following:

- entities in which the council has a shareholding
- entities to which the council can appoint a director
- companies limited by guarantee where the council is a member

The governance, structure and processes take account of the latest thinking in local government and in particular, the Lawyers in Local Government code of practice, The Governance of Council Interests in Companies. It is also draws heavily from the UK Corporate Governance Code, produced by the Financial Reporting Council.

The principle of “comply or explain” is expected in relation to following the requirements of this manual. Compliance with the requirements is mandated, unless there is a good, well-argued, and documented reason for adopting a different approach, agreed with the Council’s S151 Officer and Monitoring Officer. Prevailing constitutional and legal requirements must still be followed, however, and nothing in this manual takes precedence if there is any conflict.

At its heart, this Framework is concerned with demonstrating the transparency and accountability that is essential for all parties to have confidence in each other and to make the best decisions in the interests of all.

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## **Governance Structure**

### **The Council's Constitution**

The Constitution governs how the Council works and always takes precedence. In particular, it sets out the roles, powers, and limits of delegation of the Executive and key committees including Overview & Scrutiny and Standards & Audit committees. The Constitution should be referred to alongside this manual.

### **The Council Owned Entity's governing documents**

Each COE has a set of its own governing documents to meet the requirements of the law and those of its shareholders. Every COE is an independent entity free to operate within the scope of its governing documents. It is important that the distinction between a COE and the Council is clearly understood. The governing documents for each COE are held by the Shareholder Unit.

### **Part 3 of the Council's Constitution - Scheme of Delegation**

Part 3 describes how delegated decisions may be managed.

### **Part 6 of the Constitution – Council Companies**

This Part sets out the principles and governance that relates to COEs. It explicitly states that the Shareholder Advisory Group acts as the Shareholder (or its equivalent) in respect of all COEs. In line with Part 3, decisions can be delegated to officers. Part 6 is freely available to anyone and is, along with the rest of the Constitution, published on the Council's website.

### **Commercial Protocol**

The Commercial Protocol is owned by the Strategic Director, Corporate Resources who is responsible for its production, updating and implementation. The Commercial Protocol sets the rules which the Council must follow when dealing with commercial matters, including when dealing with companies.

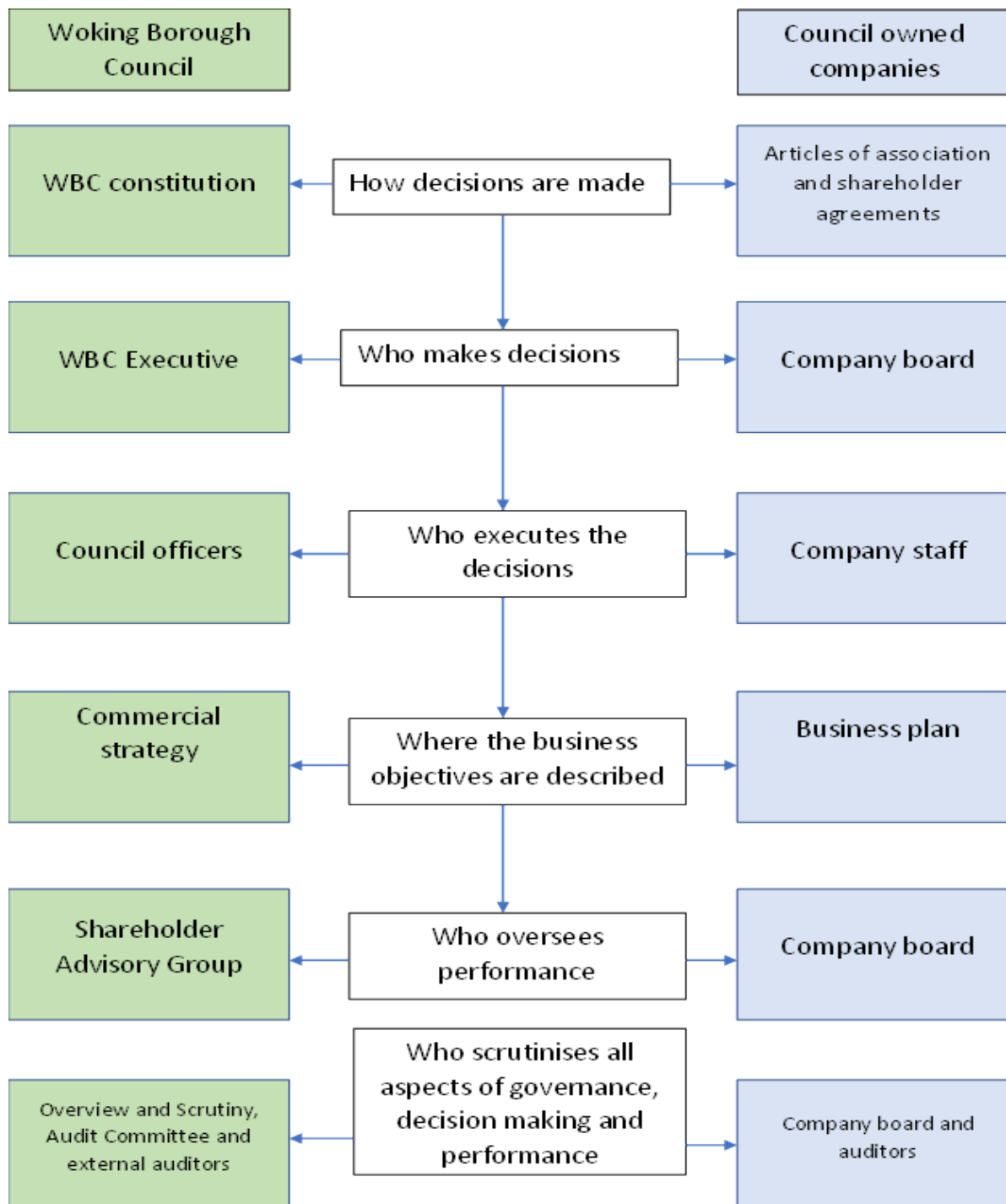
## Glossary

Articles of Association	Written rules about running the company agreed by the shareholders or guarantors, directors and (where there is one) the company secretary
CIPFA	The Chartered Institute of Public Finance and Accountancy (CIPFA) is a UK-based international accountancy membership and standard-setting body
Strategic Director, Corporate Resources	WBC officer with responsibility for all procurement, contract management and effective oversight and shareholder inputs for council owned entities
Commercial Protocol	The Commercial Protocol is owned by the Strategic Director, Corporate Resources who is responsible for its production, updating and implementation. The Commercial Protocol sets the rules which the Council must follow when dealing with commercial matters, including when dealing with companies.
Companies Act 2006	The Companies Act was introduced in 2006 to do the following things: to simplify administration, to improve the rights of shareholders, to update and simplify corporate law
Company Chair	The Chair's primary role is to ensure that the board is effective in its task of setting and implementing the company's direction and strategy. The Chair is appointed by the board and the position may be full-time or part-time
Company directors	Persons appointed to act as a director in accordance with the Companies Act 2006. They have a number of legal duties, set out in the Governance Roles section of this document
Council appointed board members	Board members (also known as directors if the COE is a company), that the council has the power to appoint.
Council Owned Entity (COE)	A company, or other entity, in which the council has an interest such as shares, the right to appoint a director or for which it is a member.
Financial Reporting Council	The Financial Reporting Council is an independent regulator in the UK and Ireland, responsible for regulating auditors, accountants, and actuaries, and setting the

	UK's Corporate Governance and Stewardship Codes. It is due to be replaced by the Audit, Reporting and Governance Authority in 2024.
Lawyers in Local Government	Lawyers in Local Government is the representational body for all lawyers and governance officers working in local authorities and similar organisations
Memorandum of association	A legal statement signed by all initial shareholders or guarantors agreeing to form the company
Reserved matters	A shareholders' agreement and / or Articles of Association will often set out things which the company should not do without first getting the approval shareholders. These are known as reserved matters
Shareholder Advisory Group	The purpose of the Shareholder Advisory Group is to advise the Leader in the exercise of their responsibility for the Council's functions as corporate shareholder of a company or group of companies and in their role to represent the interests of the Council as Shareholder Representative at meetings of a company
Shareholder agreement	An agreement entered into between all or some of the shareholders in a company. It regulates the relationship between the shareholders, the management of the company, ownership of the shares and the protection of the shareholders. They also govern the way in which the company is run
Shareholder representative	The purpose of the role is to represent and protect the council's interests and to act as a conduit between the council and the COE
Shareholder Unit	Comprises the shareholder reps, finance officer, commercial / compliance officer, and legal officer
WBC Constitution	The Constitution is <i>the</i> fundamental document that describes how the Council works. In particular it sets out the decision making process by the Executive and oversight of the Executive's decisions by the Overview & Scrutiny and Standards & Audit committees

## Operating relationship between Woking Borough Council and Council Owned Entities (COEs)

The following diagram show each entity – the Council and a COE – in its own column with their respective governance, decision making & execution, strategy & planning, oversight, and scrutiny arrangements in relation to COEs.





## **Governance Documents**

### **Articles of Association**

These are the written rules that determine how the COE is run and is agreed by the shareholders or guarantors, directors and (where there is one) the company secretary.

WBC will create a standard set of minimum requirements for the Articles of Association for any entity in which it has an interest.

### **Shareholder Agreement**

Although the articles of association and a shareholders' agreement are very similar in nature, and their contents will quite often overlap, the shareholders' agreement is a confidential document, whereas the articles of association are open for the public to view at Companies House. This may affect the decision about what is included in the articles of association and what should be kept private in the shareholders' agreement.

#### **Typically, a shareholder agreement will cover the following:**

- The nature of the company and its purpose
- The process for appointing and removing directors
- How decisions about the company will be made
- How disputes will be resolved
- The shareholders' rights to information
- How shares will be distributed and sold
- Any restraint provisions on shareholders

### **Reserved matters**

Found in the Shareholder Agreement and / or the Articles of Association, reserved matters are those things the COE can only do with the agreement of the shareholder(s).

Typically, these include the following:

- Commencement of any proceeding for the voluntary dissolution, winding up or bankruptcy of the Company.
- Any non-pro rata reduction to the share capital of the Company, except as required by law.
- Approval of and any amendment to the articles of incorporation or by-laws of the Company, which amendment would change (A) the name of the Company, (B) the jurisdiction of incorporation of the Company, (C) the purpose or purposes for which the Company is organized, (D) the size of the Board of Directors or (E) the shareholder approval requirements for Shareholder Reserved Matters.
- Any appointment to the Board of Directors
- Removal of directors
- Any merger, amalgamation, or consolidation of the Company with any other entity or the spinoff of a substantial portion of the business of the Company.

- The creation of any subsidiary entity.
- The sale, conveyance, transfer, or other disposal of all or substantially all of the assets of the Company, whether in a single transaction or a series of related transactions.
- Any change in the principal line of business of the Company.
- Entering into any mortgage, lease, or other long term financial commitment.
- The use by the company of any assets as security against any financing instrument

The specific Articles for each Company should always be referred to, this list should not be relied upon.

## **Governance roles**

### **Company Directors**

#### **Major duties of a company director**

(From Dr Roger Barker, head of Governance, IOD)

#### **The company's constitution**

The first of these duties is that a director must act within their powers under the company's constitution. The most important part of the company's constitution is the articles of association. These are an important set of rules for your company and for your board.

#### **Promoting the success of the company**

The second major duty of a company director is to promote the success of the company. The duty states a director must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members (shareholders) as a whole.

When making decisions, directors must also consider the likely consequences for various stakeholders, including employees, suppliers, customers, and communities. They should also consider the impact on the environment, the reputation of the company, company success in the longer term and all of the shareholders (including minority shareholders).

Board decisions can only be justified by the best interests of the company, not on the basis of what works best for anyone else, such as particular executives, shareholders, or other business entities. But directors should be broad minded in the way that they evaluate those interests – paying regard to other stakeholders rather than adopting a narrow financial perspective.

#### **Independent judgement**

The third major duty requires directors to exercise independent judgement. Directors are meant to develop their own informed view on the company's activities.

Directors should not be delegates who simply implement the commands of other parties (such as major shareholders). Nor should they avoid their responsibility to make independent decisions by relying on the knowledge or judgement of other directors or experts.

A director needs to form their own view, and this may require some effort – especially if they are not already familiar with key aspects of the company's activities.

#### **Exercise reasonable care, skill, and diligence**

The third major duty requires directors to exercise independent judgement. Directors are meant to develop their own informed view on the company's activities.

Directors should not be delegates who simply implement the commands of other parties (such as major shareholders). Nor should they avoid their responsibility to make independent decisions by relying on the knowledge or judgement of other directors or experts.

A director needs to form their own view, and this may require some effort – especially if they are not already familiar with key aspects of the company’s activities.

In the past, directors could be appointed purely for their name or reputation, without the expectation that they would actually do any work as a board member. Those days are now over due to the duty for directors to exercise reasonable skill, care, and diligence in their role.

The benchmark is that of a reasonably diligent person with the general knowledge, skill and experience that could reasonably be expected from a person carrying out the director’s functions. Also, directors with specific professional training or skills (such as a lawyer or accountant) are held to a higher standard in related issues than less qualified colleagues.

### **Conflicts of interest and personal benefits**

The remaining three legal duties relate to the need for directors to avoid or manage conflicts of interest which may affect their objectivity.

If situations arise which impose multiple claims on a director’s attention or loyalty, it is essential that they disclose them to fellow board members. It will then be up to the other non-conflicted board members (or the shareholders, in some cases) to decide how to manage or approve the conflict and maintain the integrity of the board’s decision-making process.

Examples of conflicts of interest include situations where the director has relationships of a business or personal nature with persons or entities that are affected by the company’s activities. It could also relate to situations where the director may be considering taking advantage, on a personal basis, of property, information or opportunity which belongs to the company.

Gifts or benefits from third parties are also a potential threat to a director’s objectivity. Most importantly, directors have a statutory duty to disclose any direct or indirect interest in proposed or existing transactions or arrangements with the company.

### **Keeping a record**

How can a director prove they’ve fulfilled these legal duties? One of the important purposes of the minutes of board meetings is to provide a record of the board’s decision-making process.

By law, these minutes must be kept for 10 years. Years from now, it may be difficult for you to remember if you fulfilled your directors’ duties in respect of some key decision. The minutes can provide vital evidence that you did – something that you may well have cause to be grateful for.

## **Council appointed board members**

### **Power to appoint and remove board members**

The public law related power to appoint and remove board members is found in the Council's Constitution. The Executive, on advice from the Shareholder Advisory Group (SAG) will normally exercise this power with arrangements in place for any in year changes to appointments that may be required.

The company law related power for the council, as shareholder, to appoint and remove board members will be found in the relevant COE's articles and shareholder agreement.

### **Competency of board members**

It is essential that existing and prospective board members are demonstrably competent, and have sufficient knowledge, to undertake the role.

To that end, board members (current and prospective) will be required to undertake training and assessment to a standard comparable to that of the Institute of Directors Director Competency Framework.

The Shareholder Unit will carry out the assessments of each board member and prospective board member. The assessment will be carried out prior to appointment and whenever board members change roles between COEs.

### **Creating a pipeline of potential board members**

The Articles of companies in which the Council has an interest give the Council the right to appoint some members of the Board. The Council is free to make appointments at its discretion. Nevertheless, it is important that prospective board members are able to demonstrate the depth of experience, intellectual ability, and personal resilience that their future role will likely require of them.

Once selected, prospective board members should undertake the training described above *before* joining the COE board.

Furthermore, as a matter of good practice, the Council should liaise with the Chair of the relevant board to determine what skills and experience (in addition to basis competency to serve as a board director) would best serve the board and company.

### **Conflicts of interest**

Conflicts of interest must be managed in accordance with the conflicts of interest section in this document.

### **Competency evaluation of board members**

COEs are required to carry out self-evaluation each year with external evaluation every third year. This must be broadly in line with FRC guidance. A key factor of this process is the evaluation of individual directors (item 5 in the checklist).

In the event that a council appointed board member is found to be ineffective, they will be required to undertake any training that is agreed between the Strategic Director, Corporate Resources and the Chair of the COE board that is likely to improve their performance. In the event that the ineffectiveness is so pronounced that any training would be unlikely to improve matters, or that the training fails in its objectives, the board member shall be replaced. If, however, the individual's effectiveness improves following training, no further action will be required.

### **Term of appointment to a COE board**

It is up to the Council, as shareholder, to determine how long a council appointed board member should remain in place. As a rule, the FRC guidance found in Appendix One should be followed. At present, this means the Chair should serve for no more than nine years, and NEDs for no more than two, three year terms.

### **Strategic Director, Corporate Resources**

The Strategic Director, Corporate Resources is the WBC officer with responsibility for oversight and shareholder inputs for council owned entities. The Strategic Director, Corporate Resources reports to the Chief Executive.

### **Shareholder Representatives**

Although the Leader is designated as the Council's Shareholder Representative, this role may be delegated to an officer or officers as the Leader sees fit, for any or all of the COEs.

For each COE, the council will appoint a shareholder representative. Each shareholder representative will have sufficient experience, skills, and capacity to be able to discharge their duties effectively and will have no actual or potential conflicts of interest. For example, they will not be in a client role relating to the services provided by the COE, nor act as Shareholder, nor have any responsibilities for the Council as lender or provider of a letter of comfort to the COE.

The purpose of the shareholder representatives is to protect the council's interests and to act as a conduit between the council and the COE.

The standards of behaviour required include:

- To act with honesty and integrity in the delivery of their duties.
- To actively communicate and collaborate with all required within the wider governance framework.
- To build and maintain effective and transparent relationships with all parties.
- To take personal accountability for own actions and decisions.
- To take personal responsibility for own continuous improvement working collectively with other shareholder representatives where appropriate.
- To actively work to promote and improve good working relationships between the Council and its companies.
- To take appropriate action to avoid conflicts of interest arising especially in relation to the shareholder role and any client roles.

All current and prospective shareholder representatives will undertake training to the same standard and scope of the Institute of Directors Director Competency Framework.

To support the shareholder representatives, a user group will be created to allow the free exchange of ideas, challenges, and experiences and to support prospective shareholder representatives as they undertake their training and in handovers from one representative to another. The user group will be organised by the Shareholder unit.

### **Creating a pipeline of shareholder representatives**

The SU will create and maintain a pipeline of prospective shareholder representatives from officers employed by WBC. The council may choose to offer a small financial incentive to interested parties to take on these additional duties. Selection and appointment of officers as prospective shareholder reps will follow prevailing WBC policies.

### **Shareholder Unit**

The Shareholder Unit (SU) comprises the Shareholder Reps and the SU officers for Commercial, Financial and Governance. The team reports into the Strategic Director, Corporate Resources.

#### **1. Purpose**

The main function of the Shareholder unit is to embed this Framework into WBC ways of working by:

- a. Acting as the custodian of the Shareholder's interests in the COEs
- b. Establishing with the SAG the outcomes WBC requires of its group companies, frequently testing the group entities against these
- c. Building and maintaining an effective and transparent relationship between the Shareholder and COEs
- d. Ensuring each COE has the right level of challenge and support from the Shareholder
- e. Establishing and maintaining a group environment and culture for COEs
- f. Preparing, gaining approval, and implementing a commercial strategy for the COEs within the group

#### **2. Approach**

- a. Keeping up to date with best practice and legislative changes
- b. Establishes impartial, factual decision making, based on reliable information and justifiable commercial criteria
- c. Operate efficient and practical processes, avoiding duplication with existing council governance
- d. Governance is collectively understood between WBC and the COEs, and is applied accordingly

- e. Shareholder compliance points are addressed (and evidenced)
- f. A collaborative and pragmatic approach is demonstrated
- g. Key events are planned for and emergent issues are managed on a priority basis
- h. Awareness between group entities of the collective challenge and opportunities is evident
- i. Current year budget and MTFS are regularly monitored and informed



## Major governance processes and policies

### Risk management policy

The Council Owned Entities (COEs) are responsible for their own arrangements in respect of risk management. WBC require these arrangements to be broadly in line with the FRC's *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting*. This requirement should be set out in the COEs Articles of Association and/or Shareholder Agreement as appropriate.

The Shareholder Unit (SU) is responsible for periodically seeking assurance that COEs are complying with this requirement. To assist SU staff, the following checklist covers the significant elements of the FRC guidance. Detailed evidence of compliance (or otherwise) will be produced in a report and sent in draft to the COE for their comments or corrections. A final version will be distributed under the Strategic Director, Corporate Resource's guidance.

### Checklist

Item	Description	Evidence
1	There is a clear statement, endorsed by the Board, setting out the COEs willingness to take on risk commensurate with its risk appetite.	
2	The risk statement is reviewed at least annually and when there is any significant business change or change to the risk environment	
3	There is a clear statement describing the nature and extent of the risks facing, or being taken by, the company which it regards as desirable or acceptable for the company to bear	
4	The Board is provided with sufficient information to allow it to assess the effectiveness with which risk is being managed or mitigated	
5	Risk management and internal controls are integrated with considerations of strategy and business model, and with business planning processes	
6	Risk management is demonstrably incorporated into the COE's day to day management and governance processes.	
7	The Board can demonstrate that the COE's management systems offer adequate assurance that risk is being effectively managed.	

## **Conflicts of interest policy**

### **Introduction**

A conflict of interest arises when an individual has competing interests or loyalties, financial or otherwise, where serving one interest may mean working against the other. Company law requires directors to disclose such interests (Institute of Directors).

Council officers or Councillors (who do not hold company directorships) may also be at risk of conflicts of interests where they work in a decision making capacity around the Council's ownership of companies. This policy is intended to augment the current officer and Councillor Codes of Conduct in the Council's Constitution.

### **Directors Duties – (Section 175 Companies Act 2006)**

Directors must avoid circumstances in which 'they have, or can have, a direct or indirect interest that conflicts with the interest of the company, or that may possibly conflict with those interests.

This applies to both actual and potential conflicts and both direct and indirect interests. This duty is absolute. There is, however, no breach of duty if the circumstances:

- Cannot 'reasonably be regarded as likely to give rise to a conflict.' In practice this means that, if the director's potential interest is so indirect or remote that no reasonable person would see a problem, it can be ignored, and
- the Director's involvement has been authorised by the rest of the board.

If neither exception applies, the conflict must be avoided

In practice, the duty means that a director cannot, without the company's consent:

- compete with the company for a commercial opportunity; or
- use, for their own purpose, information belonging to the company; make a gain from their role. These restrictions apply even if the company has no wish to pursue the opportunity or is unable to benefit from the information or the gain.

The GC 100 (a group of general counsels and company secretaries working in FTSE 100 companies) give the following examples of situations which may constitute conflict situations for a director:

- being a director of a competitor
- being a potential customer of or supplier to the company
- owning property adjacent to the company's property, the value of which could be affected by the activities of the company
- having an advisory relationship (for example financial or legal) with the company or a competitor
- being a director of the company's pension trustee company
- wanting to take up an opportunity that has been offered to, but declined by, the company

- being in a situation where they can make a profit as a result of their directorship whether or not they disclose this to the company; and
- in each of the above situations, being a director of another company and that other company having the relevant relationship with the relevant company or being in the situation described above.

The duty to avoid conflicts continues to apply to a former director as regards the exploitation of any property, information, or opportunity which they became aware of at a time when they were a director.

Conflicts of interest may be waived by a company but, as a matter of public law, never in the decision making of the Council. The Council Member / company director will *always* have a conflict of interest when it comes to their role as a councillor. This conflict must be resolved and resolved in the favour of the company. A Member (or officer) as director, therefore, must not be a party to making a decision of the Council affecting the company, but may provide evidence or advice to the Council on the company's behalf when invited to do so. Where a conflict of interest arises, Councillors or officers must, in accordance with the relevant code of conduct, remove themselves from the meeting/ decision making process and not take any further part.

The Councillor's Code of Conduct applies to a Member's activity as a director, except where it directly conflicts with the interests of the company. Where this occurs, the potential conflict must be notified to the company secretary and to the Council's monitoring officer.

### **The Council Policy for Councillors and employees**

Directorships may create additional potential conflicts of interests for councillors or officers. The way in which these are handled *within the council* are the same as other conflicts of interest.

The existing codes of conduct require that both officers and members to register and declare interests. In the case of Councillors, Section 29 of the Localism Act requires the monitoring officer to maintain a register of interests of members of the authority. Interests must be registered within 28 days of becoming a member or being re-elected. Any changes to a Councillor's interests while they are in office must be registered within 28 days of the change having taken place. Details of how this is done are set out in the Councillor Code of Conduct.

Employees must avoid situations where their conduct could create an impression of a conflict of interest in the minds of the public. Additional employments outside of council employment are not unreasonably precluded, however the guidance sets out the situations in which the written consent of the council is required. In any event, employees must avoid situations where work and personal interests conflict or may appear to conflict.

Employees must register personal interests (financial and non-financial) when they could be reasonably deemed to potentially conflict with any work undertaken by employees in the course of their duties. Notices of interests in contracts (in place or proposed) in which the council is involved must be notified in writing to the monitoring Officer.

## **Situational conflicts which will not be permitted**

The Council recognises the need for an absolute separation of roles and duties to avoid conflicts which are deemed to be unmanageable. These include but may not be limited to:

- Executive Councillors holding a portfolio who also serve as a director of a company under the control of the same portfolio
- Councillors taking shareholder decisions in respect of a company of which they are also a director, for example members of Executive.
- Officers who serve as a director of the contracting company for which they are also client. That is to say, having any responsibility or accountability for the performance of services by the COE.
- Officers who serve as director for a company for which they undertake the Shareholder Representative role for the Council.
- Conflicts prohibited by the council constitution (directorships and service on governance and audit committees)

## **Shareholder Unit controls**

The directorships held by officers and Councillors are not static, equally portfolio responsibilities for Executive Councillors, appointments to Standards & Audit and Overview & Scrutiny committees, and duties of officers change periodically. Therefore, in addition to the maintenance of registers of interests outlined in the Codes of Conduct, the Shareholder Unit will review the potential for conflicts upon all changes in directorships and portfolio responsibility / officer duties.

- Monitoring of all appointments of Councillors and officers to the register of outside bodies and review for potential conflicts of interest (annually and on changes to councillor responsibilities and officer organisational structure).
- Maintaining a register of present, impending, and potential future conflicts of interest for each council appointed director with a clear record of the avoidance, management and mitigation measures adopted.
- Checking against the registered declared interests annually and upon changes to the register
- Questionnaires to all **proposed** new council appointed company directors to assist with the identification of any conflict situation. This will include a check of connected persons' interests, which are defined in the legislation but should also cover any corporate connections or wider connections that the council may wish to know about. This is to ensure that the responsibilities under s175 of the CA 2006 can be demonstrated by the proposed director.
- Escalation of potential conflicts to the SAG, with recommendations for the removal of the conflict.

## **Company Board controls**

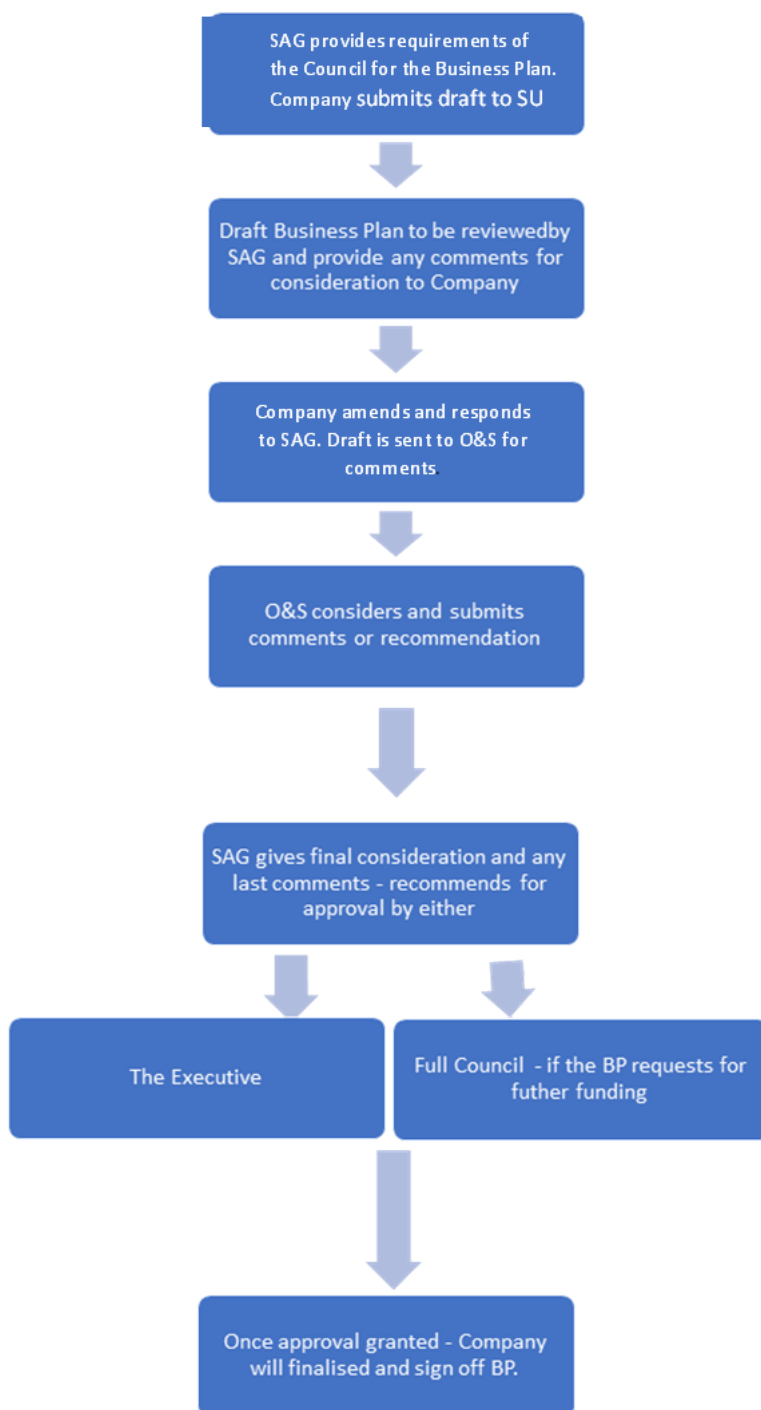
The council must be able to assure that the boards of the companies operate an appropriate conflict of interest policy and controls. The COEs should follow guidance issued by the FRC and IOD.

The broader work on companies' governance will ensure the Chair of each subsidiary and joint venture is able to demonstrate upon enquiry that appropriate measures and process are in place. Controls the council require as a minimum include: -

- Company secretary (or appointed representative) to supply each new director with a briefing note explaining the legal and company protocols in relation to conflicts and the requirement for the prior authorisation of conflict situations.
- Questionnaire to be sent to all new directors to assist with the identification of any conflict situation. Companies will need to decide if they are going to require directors to check all their connected persons' interests, which are defined in the legislation but should also cover any corporate connections or wider connections that the company may wish to know about.
- Putting in place a process for authorising conflicts, including the basis on which authorisation is to be granted and the terms/conditions attached – for example, whether a director should be excluded from the board meeting, whether board papers should be withheld, whether the director would be required to step down from his directorship on a temporary basis. Also consider confidentiality issues, including whether, if a company is to release a director from disclosing confidential information relating to a third party, it will want to make sure that the director has an equivalent release from the third party in respect of confidential information relating to the company.
- Consider appointing a board committee to review conflict authorisations (possibly the nomination committee).
- Advise directors that they may need to take independent legal advice if a direct conflict situation arises.
- Prepare board papers setting out details of each director's conflict situation, for the board then to consider and authorise, if appropriate.
- If the board wishes to pass a written resolution to authorise conflicts, the articles of association must be checked to see if a written resolution can be passed without all the directors, as interested directors cannot be counted.
- Include in the induction process for new directors a briefing on the duties and a questionnaire on their conflict situations.
- Recording of authorisations. Company secretaries to maintain a register of authorisations which can set out the terms and conditions rather than simply rely on board minutes.

## **Business Planning Process**

The diagram sets out the business planning process. It is essential that each step of the process is given sufficient time for inputs and ideas to be considered. As a minimum, the COE should be approached with the Council's requirements three months before the business plan needs to be signed off. The COE will explain how WBC's client department's views and needs are to be addressed.



## **The reporting framework**

COEs will be required to provide regular reports to the Shareholder. Each Shareholder Rep, supported by the SU, will determine the minimum reporting requirements for each COE, based on the schedules below. This requirement will be set out in the Articles of Association and / or the Shareholder Agreement as appropriate.

### Monthly:

- Performance against business plan/ budget
- Financial reporting current view of outturn turnover, profit before tax, expected year end cash balance
- Risk management update
- Cash flow forecast for companies with high liquidity risk
- Any shareholder consent matters

### Quarterly

As monthly plus

- Conflicts of interest register
- Progress against internal audit and assurance work plans
- Latest cash-flow forecast

### Every six months

As quarterly plus

- Revised and updated risk register

### Annually

As six-monthly plus

- Results of the board self-assessment / third party assessment
- Associated improvement plans
- Business plan

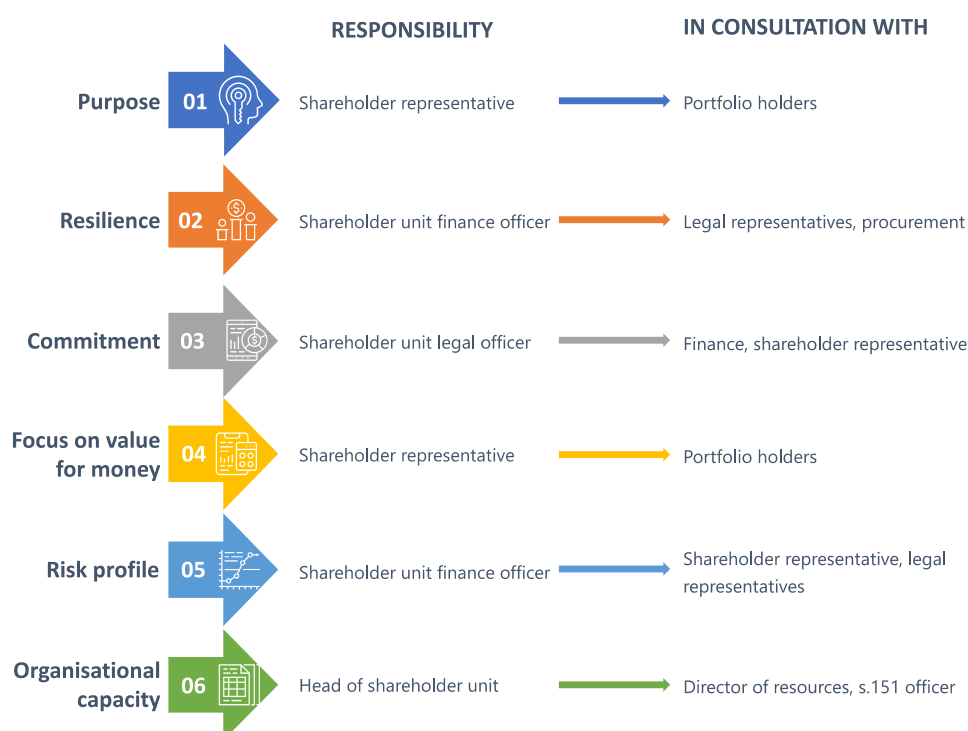
## Strategic Review

In August 2021 CIPFA produced a document for WBC, Company Oversight: **Strategic Principles and Code of Practice**. The code of practice sets out the key principles that should be considered each time that a strategic decision is required for one of the COEs and routinely, at a frequency to be determined by the Strategic Director, Corporate Resources, to ensure the COE remains aligned to the Council’s best interests. The guidance has been approved by the s.151 Officer and should be applied with the principle of “comply or explain.” The document may be found in Appendix One.

The principle as set out in the code are as follows:



Responsibility for oversight of each principle is also set out in the Code:





## **Board Effectiveness Evaluation**

The Council Owned Entities (COEs) are responsible for their own arrangements in respect of Board Evaluation. WBC require these arrangements to be broadly in line with the FRC's Guidance on Board Effectiveness. This requirement should be set out in the COEs Articles of Association and/or Shareholder Agreement as appropriate.

The Shareholder Unit (SU) is responsible for periodically seeking assurance that COEs are complying with this requirement annually with an external review every third year. To assist SU staff, the following checklist covers the significant elements of the FRC guidance. Detailed evidence of compliance (or otherwise) will be produced in a report and sent in draft to the COE for their comments or corrections. A final version will be distributed under the Strategic Director, Corporate Resources' guidance.

Whether facilitated externally or internally, evaluations should be rigorous. They should explore how effective the board is as a unit, as well as the quality of the contributions made by individual directors. Some areas which may be considered, although they are neither prescriptive nor exhaustive, include the following: -

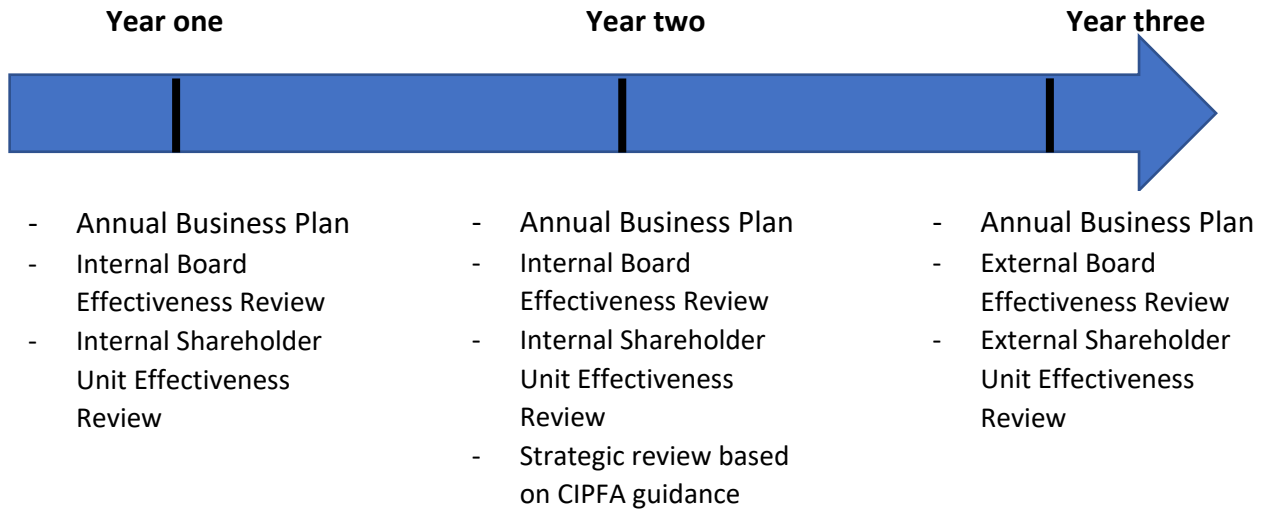
<b>Item</b>	<b>Description</b>	<b>Compliance?</b>
1	Does the COE Board have the mix of skills, experience, and knowledge in the context of developing and delivering the strategy, the challenges and opportunities, and the principal risks facing the COE?	
2	Are the purpose, direction and values of the company clearly communicated and does the Board provide effective leadership in these areas?	
3	Are there succession and development plans in place?	
4	Does the board work together as a cohesive unit?	
	Do key board relationships support the overall effectiveness of the Board? Particularly chair/chief executive, chair/senior independent director, chair/company secretary and executive/non-executive directors	
5	How effective are individual directors?	
6	How effective are Board committees, and how they are connected with the main Board?	
7	Is the quality of information provided on the company and its performance sufficient to meet Shareholder requirements? (see Standard Reporting document)	
8	Do the quality and timing of papers and presentations to the board support board effectiveness?	
9	Is the quality of discussions around individual proposals sufficient and is enough time allowed for proposals to be properly considered?	
10	Does the company secretary/secretariat support the Board effectively?	
11	Is there demonstrable clarity of the decision-making processes and authorities, looking back on key decisions made over the year?	

12	Are processes for identifying, reviewing, and managing risks (see Risk Management document) in place and functioning well?	
13	Can the board demonstrate that it communicates with, and listens and responds to, shareholders and other key stakeholders?	

### Council Owned Entities – high level activities cycle

This diagram sets out the annual activities cycle as well as those activities that will be carried out only once every three years. In the case of a Strategic review, this may also be asked for by the Council when any significant change to a COE is requested, for example entering a new business area.

More detailed consideration of these activities is found later in this handbook.



## **Shareholder Unit Effectiveness Review**

The Strategic Director, Corporate Resources is responsible for ensuring the Shareholder unit is operating effectively. Annually, an internal review will be conducted and every third year an independent review will be carried out by the Council’s audit team.

The effectiveness of the SU will be assessed with reference to the Terms Of Reference, the SU business plan and feedback sought from the COEs, Shareholder Reps and the SAG.

In addition, the LLG Code of Practice Checklist should be used:

<b>Item</b>	<b>Description</b>	<b>Lead Role</b>	<b>Supporting activities</b>	<b>Evidence of effectiveness of SU</b>
1	Are COEs monitored against local authority trading powers?	Activity managed by Shareholder Rep	Monitoring at scheduled meetings with company	
2	Are COEs monitored against local authority financial regulations (e.g. borrowing)?	Activity managed by Shareholder Rep	Monitoring at scheduled meetings with company	
3	Are Controlled companies applying standards expected of the local authority?	Activity managed by Shareholder Rep	Monitoring at scheduled meetings with company	
4	Is any Management/ Shareholder agreement understood and applied correctly?	Activity managed by Shareholder Rep	Monitoring at scheduled meetings with company	
5	Have the COEs adopted a comply or explain approach to UK Corporate Governance Code?	Activity managed by Shareholder Rep	Monitoring at scheduled meetings with company	
6	Has an assessment of adequacy of controls over the company been undertaken and management agreement amended, if required?	WBC Legal	Activity managed by Shareholder Rep	
7	Are Overview and Scrutiny, and Standards & Audit committees informed and engaged with the SU?	Activity managed by WBC companies finance lead	Scheduled plan of work through sub-group to Standards & Audit committee	
8	Is induction/ training and support to Shareholder	Activity managed by WBC	Standard induction and training checklist – monitored by	

	Representatives provided?	companies finance lead	WBC finance & legal. Cohort training on a scheduled basis	
9	Is a Comprehensive Statement (The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009) in place and monitored against business plans?	Activity managed by WBC companies finance lead	Process facilitated by Shareholder Representative	
10	Are any financial agreements between WBC and COEs in place and up to date?	Activity managed by WBC companies finance lead	Process facilitated by Shareholder Representative	
11	Is the Company business plan scrutinised annually and taken to the Executive for approval, as per the prescribed process?	Activity managed by WBC companies finance lead	Process facilitated by Shareholder Representative	
12	Where expedient, is a common approach applied across the group – policies e.g. social value, audit, financial procedures and health & safety	Activity managed by Shareholder Rep	Supported by WBC finance, legal, HR, Audit, and risk	
13	Any common approach is reviewed and kept up to date	Activity managed by WBC companies finance lead	Supported by WBC finance, legal, HR, Audit, and risk	
14	Are conflicts of interest identified and managed	Activity managed by Shareholder Rep	Supported by WBC finance, legal, HR, Audit, and risk	
15	Do WBC appointed company chairs have a casting vote?	Activity monitored by Shareholder Rep	Supported by WBC finance, legal, HR, Audit, and risk	
16	Is a remuneration committee in place and operated for each COE?	Activity monitored by Shareholder Rep	Monitoring at scheduled meetings with company	

17	Is an audit committee in place and operated for each COE?	Activity monitored by Shareholder Rep	Monitoring at scheduled meetings with company	
18	Are officer and member indemnities in place – care they checked annually or on change of membership?	Activity managed by Shareholder Rep	Supported by WBC finance, legal, HR, Audit, and risk	
19	Are non-executive memberships reviewed, along with a check on individuals' skills and capability?	Activity managed by Shareholder Rep	Annual review: Supported by WBC finance, legal, HR, Audit, and risk	
20	Are SU terms of reference reviewed?	Activity managed by WBC companies finance lead	Operation of the monthly SAG reporting process is regularly tested to ensure compliance against the code of practice	

## Appendix One – guidance documents

### Lawyers in Local Government: The Governance of Council Interests in Companies – Code of Practice



Council\_Interests\_i  
n\_Companies\_Code.

### [Financial reporting Council: The UK Corporate Governance Code, July 2018](#)



2018-UK-Corporate-  
Governance-Code-F

### [Financial reporting Council: Guidance on Board Effectiveness, July 2018](#)



2018-Guidance-on-  
Board-Effectiveness-

## **Shareholder Advisory Group**

### Terms of Reference

Adopted: March 2023

#### **Overview**

The purpose of the Shareholder Advisory Group is to advise the Leader in the exercise of their responsibility for the Council's functions as corporate shareholder of a company or group of companies and in their role to represent the interests of the Council as Shareholder Representative at meetings of a company.

#### **Decision making**

The Leader (or other Executive member appointed by the Leader for this purpose) may make decisions concerning companies in which the Council is or is proposed to become a shareholder, either:

- (a) in Executive; or
- (b) in the presence of the Shareholder Advisory Group.

#### **Membership and Arrangements**

The Shareholder Advisory Group shall consist of the Leader (or other Executive member appointed by the Leader for this purpose) in the presence of:

- (a) Such Members of the Executive as are appointed by the Leader (which shall be at least two);
- (b) One co-opted member, who will be an independent person providing relevant expertise and appointed on merit; and
- (c) Relevant senior Officers of the Council as are appointed by the head of paid service (or their deputies); together with
- (d) The Chair of Overview and Scrutiny Committee, as a Member of the Council from outside of the Executive, to act in the capacity of Observer.

The Service Director for Finance (s151 Officer) and the Service Director for Legal and Democratic Services (monitoring Officer), or their deputies, will be advisors to the Group to provide open and strong advice.



Other members of the Executive (who are not directors of any of the companies concerned) may attend and vote as substitutes in the event that an appointed member of the Shareholder Advisory Group is unable to attend

### **Restrictions on Membership**

As the Shareholder Advisory Group is to advise and discharge Executive functions in relation to company matters and the role of the Shareholder Representative, only Executive members can be members of the Shareholder Advisory Group with voting rights, although other Executive members and non-Executive members can be invited to attend, without voting rights.

### **Meetings**

The Shareholder Advisory Group shall meet on a basis agreed by itself and normally in private.

The quorum shall be the Leader (or other Executive member appointed by the Leader for this purpose) in the presence of a minimum of:

- (a) one other Executive Member;
- (b) one independent co-optee; and
- (c) one senior Officer appointed to the Group (or their appointed deputy).

An invitation to attend must have been provided to the Chair of Overview and Scrutiny Committee (or their nominated deputy) at least three clear days in advance of the meeting taking place. This notice period may be waived if the Chair of Overview and Scrutiny Committee (or their nominated deputy) so agrees.

An invitation to attend must also have been provided to the section 151 Officer and the monitoring Officer (or their nominated deputies), which will normally be at least three clear days in advance of the meeting taking place.

The Leader (or appointee) will chair the Shareholder Group and a Vice Chair will be selected from the elected members of the Shareholder Group.

### **Sub-Groups**

To assist it in its functions the Shareholder Advisory Group:

1. may establish and consult standing sub-groups, such as might be required in respect of:
  - (a) Audit and Risk;
  - (b) Ethical practices; or
  - (c) Nominations and Remuneration

2. may establish and consult ad-hoc or task and finish sub-groups in respect of any matter; and
3. may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies

A sub-group or stakeholder group may contain such co-opted members, advisors or observers as the Shareholder Advisory Group sees fit.

## Functions

1. Monitor the performance of a company in relation to its Business Plan and, in particular, the company's performance:
  - (a) in financial matters
  - (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plan; and
  - (c) against the values of the Council.
2. Evaluate and monitor:
  - (a) the financial and social returns on investment (be that shareholding, loans, or direct investment); and
  - (b) risks and opportunities including those arising from joint ventures or new opportunities.
3. Consider matters reserved to the Council for shareholder approval, such as:
  - (a) Varying Articles of Association
  - (b) Varying ownership and structure
  - (c) Variations to shares (number of, rights, etc.
  - (c) Entering contracts that:

are outside of the business plan or do not relate to the business

- (d) Material legal proceedings outside of ordinary business
- (e) Adopting and amending business plans each year and strategic plans (3 years)
- (f) Appointment, removal, and the remuneration of directors (members of the company board)
- (g) Selection of the chair of the board
- (h) Appointment of auditors

(i) Payment of dividends

as more particularly set out in a company's Articles of Association or Shareholder Agreement.

### **Relationship**

The Shareholder Advisory Group as it considers appropriate in accordance with its functions described above, may:

1. report and make formal recommendations to the Leader, directly or to the wider Executive;
2. make reports to and consult Overview and Scrutiny (including Full Council)  
or
3. make reports to and consult the Standards and Audit Committee, in relation to that Committee's particular functions.