

Part 6 – Council Companies

1.0 Introduction

- 1.1. The Council has various statutory powers to enable it to set up a company which may take various forms. The Council must effectively manage the relationship between the Council and the companies to ensure that they deliver the objectives established for it by the Council and to ensure transparent and robust governance processes for both the Council and the companies with reference to the Council Companies' Governance Framework.
- 1.2. The Council owns 24 companies either as 100% Shareholder or through joint ventures. Where the Council uses the enabling legislation to create its own companies, either as the sole or as a joint owner, the broad terms of the objects of each Council company will be recorded in its Articles of Association, while its Shareholder Agreement (where necessary) will set out more detailed operational arrangements and the matters which are reserved for determination by the Council as the shareholder. In general, these reserved matters will be key structural and high-level strategic matters rather than the "day-to-day" business and operations of the company, which will be the responsibility of the company directors.
- 1.3. This part of the Constitution should be read in conjunction with the Council's Companies' Governance Framework.

2.0 Principles of Governance of Council Companies

- 2.1. Any decisions or recommendations in relation to the companies shall be formed with clear reference to the principles outlined in the Council's Companies' Governance Framework.
- 2.2. The Council's governance arrangements will seek to ensure the following:

Appropriate Controls and Freedoms

- (i) The companies will be provided with sufficient freedoms to allow it to achieve its objectives, but
- (ii) The Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained in line with the companies, confirmed in the business case and business plan.
- (iii) The trading activities of the companies are, wherever possible, conducted in accordance with the values of the Council.

Appropriate Relationships, Integrity, Transparency and Accountability

- (i) Procedures operate in a way that protects the commercial interests of the companies **and** those procedures will ensure that the Council can carry out its functions as an investor, as a trustee of public funds and a Council committed to due responsibility for the exercise of its functions.
- (ii) An Executive Committee or the Leader can make decisions based upon complete and accurate consideration of company business plans or proposals,

- (iii) An Executive Committee or the Leader can evaluate social and financial benefits and returns in line with the business plan, and
- (iv) The Council's Scrutiny Committees are able to exercise their powers in relation to the Executive's decision making.

Understanding of roles of the Council and the Company

2.3. That there is sufficient induction, regular training and other materials in place so that:

- (i) their legal duties,
- (ii) stewardship of assets,
- (iii) the provision of the governing documents,
- (iv) the external environment, and
- (v) the total structure of the Council and the Company

are appropriately understood by Councillors in their various roles including as a Member of the Council, the Executive, Scrutiny Committees, Shareholder Executive Committee, by officers of the Council and by Directors of the Company and that the standards outlined in the Companies' Governance Framework (informed by the Lawyers in Local Government Code of Practice, the UK Corporate Governance Code, the Institute of Directors and CIPFA) are met or, where not deemed appropriate, reasons for not doing so are clearly set, justified and approved.

3.0 Roles, Responsibilities and Decision Making

- 3.1. The responsibility to represent the Council as shareholder for the companies is an Executive function under the Local Authority (Functions and Responsibilities) England regulations 2000.
- 3.2. The Shareholder Executive Committee (Appendix 12) will decide any matters falling within company's reserved matters, to protect the Council's interests and investments in the company and determine the future direction of the company.
- 3.3. The Shareholder Liaison Service (SLS) comprises the officers for Commercial, Financial and Governance. The team reports into the Strategic Director of Corporate Resources.
- 3.4. The activities of the Shareholder Executive Committee will be subject to consideration by the Council's Scrutiny Committee(s) and call-in procedures.
- 3.5. The individual companies will not be directly accountable to the Council's Scrutiny Committee(s). Each Council-owned company is an independent legal entity which is entirely separate from the Council. The company will have its own identity and responsibilities, so cannot be treated as an internal department of the Council. A Council-owned company is required to comply with Company law, its Articles of Association and its Shareholder's Agreement. It is not governed by the Council's Constitution.

- 3.6. Reserved matters follow the Council's Executive decision-making processes set out in Article 7 – Executive Arrangements and will be treated as subject to part 4 section 6 – Access to Information Procedure Rules.
- 3.7. Decisions on Reserved matters relating to companies where the Council has a controlling interest, or a minority interest will be taken in the same manner as wholly owned companies. The constitution notes that in the case of companies which are not wholly owned an Executive Decision is subject to the consent of the other shareholders in the entity which shall be governed in accordance with the provisions of the relevant Shareholder Agreement.
- 3.8. Each company will be governed by a formally constituted Board which is tasked with delivering the Shareholder's objectives and reporting to the Shareholder/Owner on strategic and key operational matters as set out in the Companies' Governance Framework.
- 3.9. The appointment and dismissal of Directors (including non-executive Directors) is a reserved matter for the Shareholder/Owner/Owners and this must be reflected in the companies' articles. Directors are responsible for the management of the business of the company with exception of the reserved matters.
- 3.10. The Council's Scrutiny Committee(s) are responsible for scrutiny of the Executive's decisions in relation to companies and can make recommendations to the Executive on company related matters. Executive decisions on companies are subject to the Call-in processes outlined in Article 8 – Scrutiny Committees.
- 3.11. Scrutiny Committees can invite company representatives to attend meetings to provide information to support the scrutiny of the Executive. This does not extend to scrutiny of the company and its performance.

4.0 Access to Information

- 4.1. This should be read in conjunction with Part 4 section 6 – Access to Information Procedure Rules which covers access to meetings and documents of the Council, the Executive and its Committees.
- 4.2. Reserved matters which require Shareholder/Owner consent are defined in the Articles of Association or Shareholder Agreement for each company. The process for approving and recording decisions relating to reserved matter will be defined within the Shareholder Agreement and will be consistent across all companies as far as possible. Such decisions are Executive Decisions and are also captured by the Council's Access to information Procedure Rules.
- 4.3. Each Company will maintain strong controls framework with adequate financial records which meet the requirements of the Companies' Governance Framework. Each should have the documents set out below:
 - (i) Business Case – assesses the risks and benefits involved in the creation of proposed COEs.
 - (ii) Articles of Association – sets out the constitution of the COE.
 - (iii) The Shareholder Agreement – sets out the rights of the Council as the sole/co-shareholder and how it can exercise those rights.

- (iv) The Funding Agreement – sets out what financial assistance is to be provided by the Council to the COE and on what terms.
 - (v) The Business Plan – forward looking, setting out what the COE will do and the objectives of the business and how they are to be achieved.
 - (vi) Shareholder Board Agenda and summary or meeting discussions and decisions.
 - (vii) Monthly performance reports.
 - (viii) Monthly management accounts.
- 4.4. All of the above documents and details about which individuals sit on the Board of Directors are accessible by Councillors and members of the public unless they contain exempt or confidential information.