

## **Part 3 – Council-owned Companies**

### **Introduction**

The Council has various statutory powers to enable it to set up a company or companies, which may take various forms. This Part 3 refers to Council-owned Companies but applies equally to any vehicle the Council may incorporate or otherwise establish under its statutory powers. The provisions in this Part 3 apply to existing Council-owned Companies and any similar vehicles that the Council sets up or in which it decides to participate.

Any Council-owned Company must be managed effectively, and the Council must ensure that any Council-owned Company delivers the objectives for which it was established. There must also be transparent and robust governance in place for any Council-owned Company so that the Council has effective and appropriate oversight of its activities.

Due to the Council's current financial circumstances, it is not envisaged that any new limited company arrangements will be established unless they can clearly demonstrate the capacity to deliver significant financial savings with limited financial outlay and minimal exposure to risk. However, for completeness, the following considerations should apply:

### **Considerations for setting up a Council-owned Company**

Before setting up a Council-owned Company, the Council should take the following factors into consideration:

- The legal form the Council-owned Company will take;
- A realistic assessment of all potential risks;
- How the Procurement Regulations apply, including the Teckal exemption;
- How and when the Council-owned Company will be incorporated and registered;
- The provisions of the Council-owned Company's Articles of Association;
- How, and in what circumstances, the Council will exit the Council-owned Company in the future;

- Who the directors of the Council-owned Company will be, including how the Council will be represented on the board;
- The Shareholder arrangements for the Council-owned Company;
- The reporting and monitoring arrangements for the Council-owned Company; and
- The business case and the business plan for the Council-owned Company, setting out its alignment with the Council's objectives, and the potential financial impact of the Council-owned Company (including the amount and timing of any financial support it will require).

When setting up a Council-owned Company, the Council should review its proposals against the checklist appended to this Part 3.

### **Project plan for setting up a Council-owned Company**

Once the decision to set up a Council-owned Company has been made, the Council will need to deal with implementing the project plan. This will include practicalities such as:

- IT system;
- setting up a new bank account;
- payroll providers;
- year-end accounts;
- VAT returns;
- establishing budgets and monitoring procedures;
- establishing procurement processes;
- establishing clear lines of authority and accountability in all areas;
- data storage and handling;
- internal and external audit requirements; and
- discussing an exit strategy.

## **Council-owned Company governance**

Decisions and recommendations in relation to Council-owned Companies should be made by reference to the principles set out below:

### **Integrity and Accountability**

The Council should ensure that its Council-owned Company procedures operate in a way that protects the commercial interests of the Council-owned Company while ensuring that that the Council can carry out its functions as an investor, as a trustee of public funds and as a Council committed to due responsibility for the exercise of its functions. The Council should also ensure that Council-owned Companies are managed in a way that seeks to avoid and/or mitigate exposure to unnecessary financial risk or to unexpected financial outlays.

In addition:

- an Executive Committee or the Leader should be able to make decisions based on complete and accurate consideration of Council-owned Company business plans or proposals;
- an Executive Committee or the Leader should be able to evaluate social and financial benefits and returns in line with the business plan;
- the Overview and Scrutiny Committee(s) should be able to exercise their powers in relation to the Executive's decision making in respect of Council-owned Companies; and
- any requests for additional funding should be subject to the Council's usual authorisation requirements as set out in the Scheme of Delegation and Financial Limits Annex.

### **Controls and Freedoms**

A Council-owned Company needs to have sufficient freedom that it can achieve its objectives. However, this needs to be balanced against the need for the Council to retain sufficient control to ensure that:

- its investment is protected,
- appropriate social and financial returns on investment can be achieved in line with the Council-owned Company's business case and business plan,

- activities of the Council-owned Company are conducted in line with the values of the Council, and
- activities undertaken by the Company do not expose the Council to financial risk.

### **Councillors**

Councillors have an important role to play in the governance of Council-owned Companies. The Council should ensure that Councillors are provided with sufficient training (at induction, and on an ongoing basis) so that they understand their role in relation to Council-owned Company governance.

Councillors should be mindful of:

- their legal duties;
- stewardship of assets;
- the provisions of a Council-owned Company's governing documents;
- the external environment; and
- the structure of the Council and how Council-owned Companies fit within it.

Councillors should consider these issues in their various roles, including as Members of the Council, Executive Members, Overview and Scrutiny Committee members / chairs, members of the [Shareholder Committee], and as directors of a Council-owned Company board (as appropriate).

### **Officers**

Officers should also be aware of Council-owned Company governance and should ensure that it is complied with effectively and that the Lawyers in Local Government Code of Practice and the CIPFA local authority owned companies good practice guide are followed. The Section 151 Officer will provide monthly financial report packs including cash flow and P&L forecasts to the Senior Leadership Team for their review.

Where Officers are appointed as Board members of a Council-owned Company, they should be made aware of the potential for conflicts of interest and how this can be

avoided. Before accepting any Board member appointments, Council Officers should ensure that they have:

- appropriate levels of relevant expertise and experience;
- sufficient time capacity to undertake the role effectively;
- sufficient knowledge and understanding of the content of the Financial Procedure Rules and this Part 3 (Council-owned Companies) to enable them to perform the role in line with the governance principles they contain; and
- sufficient authority to make decisions on the Council's behalf.

### **Decision Making**

Roles and responsibilities of all parties connected with a Council-owned Company need to be clearly defined, and clear decision-making processes should be put in place.

The creation of any new Council-owned Company (including a subsidiary of an existing Council-owned Company), or a significant change in the purpose of an existing Council-owned Company is a Key Decision and will require a business case. The relevant Portfolio Holder will be consulted on the development of the business case, which must be approved in accordance with the executive decision-making provisions in this Constitution.

The Council is the Shareholder (i.e., the owner) of each Council-owned Company. The Shareholder can appoint a Shareholder Representative (usually the Chief Executive of the Council or a Corporate Director) to attend General Meetings of Council-owned Companies. The Shareholder Representative may vote on behalf of the Council (as Shareholder) at any meeting of the Council-owned Company board, based on a direction of the Shareholder Committee.

The Council has a Shareholder Committee that receives reports in relation to Council-owned Companies and the Shareholder Representative for any Council-owned Company will report to this Committee. It is also the primary decision-making body in relation to Council-owned Companies on behalf of the Council.

Reserved matters (i.e., matters reserved for decision by the Council) are approved by the Shareholder or Shareholder Committee or referred to an Executive Committee or the Leader (as appropriate). Reserved matters should be recorded in a Council-owned Company's Articles of Association or Shareholder Agreement.

Decisions on reserved matters follow the Council's executive decision-making processes. The process for approving and recording decisions relating to reserved matters should be defined in the relevant Shareholder Agreement and should be consistent across all Council-owned Companies as far as possible.

Decisions on reserved matters relating to companies in which the Council has an interest but is not the sole Shareholder, will be taken in the same manner as for wholly owned Council-owned Companies. Where the Council is not the sole Shareholder of a company, an Executive Decision in relation to that company is subject to the consent of its other Shareholders and shall be governed in accordance with the provisions of the relevant Shareholder Agreement.

### **The Board**

Each Council-owned Company will be governed by a formally constituted Board which is tasked with delivering the Shareholder's objectives and keeping the Shareholder informed about strategic and key operational matters.

The appointment and dismissal of Council-owned Company Directors (including Non-Executive Directors) is a reserved matter for the Shareholder(s). Directors are responsible for the management of the business of the Council-owned Company, except reserved matters.

The Council should ensure that the Directors appointed to the Board have appropriate knowledge and expertise, including specialist knowledge where required. Directors should be provided with appropriate training before taking up their posts, and on an ongoing basis, and should be made aware of their personal risk in acting as a Director. Training should cover:

- the requirements of the Shareholder(s) and the relevant company documents and policies;
- the requirement for Directors to make an annual statement of compliance and assurance against an original list of documents (updated as required);
- the expected time commitment per annum and fees if applicable (non-executive directors);
- the code of conduct, confidentiality and data usage for Directors;
- a declaration of other interests at appointment and through the register of interests and at meetings of the Board; and

- the duties of Directors, reminding them to act in the best interests of the company.

Board meetings should be held at regular intervals to ensure that the Council-owned Company is run effectively.

To avoid excessive churn of Directors, consideration should be given to whether non-executive Directors will be remunerated and/or asked to commit to a minimum term.

### **Scrutiny**

The Overview and Scrutiny Committee is responsible for scrutiny of Executive Decisions in relation to Council-owned Companies and can make recommendations to the Executive on Council-owned Company-related matters. Executive Decisions on Council-owned Companies are subject to the Call-in processes outlined Part 3 of Chapter 4 (Scrutiny Procedure Rules) of this constitution.

Overview and Scrutiny Committees can invite Council-owned Company representatives to attend meetings to provide information to support the scrutiny of the Executive. This does not extend to scrutiny of the Council-owned Company and its performance.

### **Conflicts of interest**

A Council-owned Company's conflicts of interest policy should:

- provide a definition of conflicts of interest;
- state the company's commitment to addressing the issue of conflicts of interest;
- define the nature of conflict of interest risk in the company and set out clearly the actions or behaviours that individuals are expected to follow, or avoid;
- set out staff and Directors' obligations in relation to the conflicts of interest policy;
- set out guidance for identifying conflicts of interest that may arise and arrangements for reporting them;
- set out a process for managing conflicts of interest, including responsibilities for decision-making and the decision-making criteria;
- establish a mechanism for recording interests that can commonly give rise to a conflict; and

- set out the consequences of non-compliance with the policy, e.g., disciplinary action.

### **Client-side management**

Where a Council-owned Company delivers services to the Council, the shareholder relationship will be insufficient to oversee the day-to-day activities of the Council-owned Company and there should be client-side arrangements in place to manage that relationship. This should include mechanisms for:

- monitoring of contract(s) between the Council and the Council-owned Company;
- service level agreements setting out the services to be delivered, applicable KPIs, other performance measures, and performance management arrangements; and
- memoranda of understanding between the Council and the Council-owned Company setting out the respective responsibilities and obligations of each party.

### **Access to Information**

Decisions on reserved matters are Executive Decisions and are covered by Chapter 8 (Access to Information Procedure Rules) of this constitution.

Documentation relating to a Council-owned Company (see below), and details of the individuals who sit on the Board of Directors and the company's Shareholders are accessible by Councillors and members of the public, unless it contains exempt or confidential information.

### **Documentation**

Each Council-owned Company must maintain a strong controls framework with adequate financial records which meet appropriate company standards. Each Council-owned Company should have the documents set out below:

- Business Case assessing the risks and benefits involved in the creation of the Council-owned Company;
- Articles of Association setting out the Council-owned Company's constitution;
- Shareholder Agreement setting out the rights of the Shareholder(s) and how those rights can be exercised;



- Funding Agreement setting out what financial assistance is to be provided by the Council to the Council-owned Company and on what terms;
- Business Plan which should be forward looking and should set out what the Council-owned Company will do, and the objectives of the business and how they are to be achieved; and
- Shareholder Annual Report which should look back to provide a review of progress against the one year business plan.

## Reporting

Each Council-owned Company should provide, as a minimum, the following reports to the Council:

- General Meeting agenda and summary or meeting discussions and decisions;
- monthly performance reports;
- monthly management accounts; and
- year-end financial statements.

The Council has a responsibility to maintain a watching brief over a Council-owned Company's activities to ensure that they are in line with the Business Plan and the company's objectives.

The Council's Section 151 Officer should liaise with limited company external auditors to ensure that:

- year-end accounts are produced in line with the Council's statutory reporting requirements and the timetables produced by Council to support year-end close;
- year-end accounts are produced in a format which is consistent with the Council's own financial reporting framework, for the purposes of consolidation and review; and
- transactions and balances between the Company and the Council are clearly identified.

## **Changing the nature of a Council-owned Company**

The Board of a Council-owned Company must gain the approval of the Council before making pursuing any an opportunity to diversify or grow in a way that changes its scope and is not in accordance with its mandate. Such changes could include:

- change of use / scope;
- change in investment / returns / yield;
- change to company constitution;
- change to risk profile;
- change of ownership or share of ownership;
- sale or divestment; and/or
- wind-up.

Such opportunities should be considered on their own merit and will require a business case. The Board should consider any impact on existing governance arrangements and set this out for the Council following a process set by the Council.

The Council-owned Company's purpose must remain aligned with the Council's overall strategy. Where this is not the case, the company may require a constitutional change to realign objectives and, where this is not possible, consideration must be made as to its future.

## **Reviewing Council-owned Company arrangements**

Council-owned Company arrangements should be kept under regular review by the Council to ensure that they are operating effectively and remain fit for purpose. The Shareholder Committee should report to Full Council quarterly on the activities being carried out by Council-owned Companies and how these activities are meeting the Council's objectives.

## Appendix

Good practice governance checklist for Council-owned Companies:

	Articles of Association / Shareholder Agreement / Other (please specify)	Complete
<b>Incorporation and processes of the Council-owned Company</b>		
Company purpose and objectives		<input type="checkbox"/>
Authorised share capital		<input type="checkbox"/>
Voting rights		<input type="checkbox"/>
Shareholder rights		<input type="checkbox"/>
Policy for declaring conflicts of interest		<input type="checkbox"/>
Procedure for general meetings of the Shareholder(s)		<input type="checkbox"/>
Procedure for Board meetings, including quorum		<input type="checkbox"/>
Indemnities and insurance		<input type="checkbox"/>
Process for appointing Directors, including the Council's right to appoint and remove Directors		<input type="checkbox"/>
Provision for Director requirements		<input type="checkbox"/>
Process for keeping Board appointments under review		
Auditor access and appointment		<input type="checkbox"/>
Registered office		<input type="checkbox"/>
<b>Council-owned Company management and reporting</b>		
Flow of information between Council and company, including frequency		<input type="checkbox"/>

	<b>Articles of Association / Shareholder Agreement / Other (please specify)</b>	<b>Complete</b>
Approval of the business plan and annual budget by the Council		<input type="checkbox"/>
Process for recording Board decisions		<input type="checkbox"/>
Performance reporting arrangements – consider whether a standard form report is required and how often performance should be reported to the Council (usually quarterly)		<input type="checkbox"/>
Financing arrangements for the Council-owned Company		<input type="checkbox"/>
Dividend arrangements		<input type="checkbox"/>
Subsidiaries		<input type="checkbox"/>
Management of the Council-owned Company and its affairs		<input type="checkbox"/>
Stakeholder groups		<input type="checkbox"/>
Business plan compliance		<input type="checkbox"/>
Reporting and accounting matters		<input type="checkbox"/>
Banking arrangements		<input type="checkbox"/>
The circumstances in which the Shareholder Agreement will terminate		<input type="checkbox"/>
Carve out for unlawful fettering of Council-owned Company / Council powers		<input type="checkbox"/>
Sub-contracting arrangements		<input type="checkbox"/>
Severance		<input type="checkbox"/>
Partnership and agency		<input type="checkbox"/>
Confidentiality provisions		<input type="checkbox"/>

	Articles of Association / Shareholder Agreement / Other (please specify)	Complete
Conflict with Articles of Association		<input type="checkbox"/>
Where the Council is not the sole Shareholder, Events of Default and their consequences (e.g., right of non-defaulting Shareholder to acquire defaulting Shareholder's shares)		<input type="checkbox"/>
Where the Council is not the sole Shareholder, the process for resolving deadlock		<input type="checkbox"/>
<b>Matters reserved to the Council</b>		
Power to remove and appoint Directors		<input type="checkbox"/>
Power to restrict the Council-owned Company's rights to issue new shares and/or admit new members		<input type="checkbox"/>
Power to limit the Council-owned Company's borrowing rights?		<input type="checkbox"/>
Power to require the Council-owned Company to provide regular information		<input type="checkbox"/>
Power to approve the annual business plan and in-year amendments, including proposals to expand trading with third parties		<input type="checkbox"/>
Power to require compliance with restrictions on political activity or any other requirements		<input type="checkbox"/>
Power to appoint auditors		<input type="checkbox"/>
Power to amend the Articles of Association		<input type="checkbox"/>

	<b>Articles of Association / Shareholder Agreement / Other (please specify)</b>	<b>Complete</b>
Power to vary the ownership structure of the Council-owned Company		<input type="checkbox"/>
Power to approve the Council-owned Company entering into contracts that are outside the business plan and/or increase the risk to the company		<input type="checkbox"/>
Power to issue dividends		<input type="checkbox"/>
Material legal proceedings outside the Council-owned Company's ordinary business		<input type="checkbox"/>
Power to select the chair of the Board		<input type="checkbox"/>

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