Strategic Investment Board Annual Report 2022/23

PART ONE: INVESTMENTS OVERVIEW

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Shareholder Board

Introduction

The Council's strategic framework for innovation and investment has supported the development of initiatives to enhance the financial resilience of the Council. The Council Member-led Strategic Investment Board (SIB) monitors the Council's trading activity and its investments in companies to ensure satisfactory performance and effective risk management. The financial returns delivered by trading and investment helps to ensure that we continue to deliver quality services to our residents.

The SIB provides effective over-sight ensuring alignment with the strategic objectives and values of the Council. The SIB safeguards the Council's interests and takes decisions in matters that require the approval of the Council as owner or as a shareholder of a company.

The annual report of the SIB provides an overview of the progress we have made in the year in enhancing the financial resilience of the Council. The report also gives an update on the companies' full year performance for 2022/22.

Tim Oliver

Leader of Surrey County Council

Purpose

The primary and most common purpose behind the creation of a Local Authority Trading Company (LATC) is to enable a Council to participate in commercial trading activities. Many local authorities have created a LATC for this purpose, with the most common reason given being in order to grow income to protect services.

The decision to create a company or invest in shares is now taken by the SIB upon the basis of a business case. Like many other Councils, Surrey County Council (SCC) has created companies to trade and grow income; with profits generated for the Council available to support the delivery of the Council's Medium Term Financial Strategy and enhance financial resilience. This is however not the only reason for the creation of a company or investment in shares.

Surrey Choices for example was set up to safeguard the provision of services to people with learning and physical disabilities. Cabinet likewise approved the creation of a Property Company to strengthen the Council's ability to invest in a diversified and balanced portfolio of assets in pursuit of its Investment Strategy. The investment in the UK Municipal Bonds Agency was made to give the Council an alternative source of finance at preferential rates. The establishment of a Recruitment Joint Venture, Connect2Surrey, will enable the Council to have flexibility and control of temporary and interim recruitment in a changing market to suit both the needs of the Council and of the workforce.

The Council has created companies and purchased shares in order to -

- Deliver services, benefiting from efficiencies driven by operating in a commercial environment
- Trade & generate income
- Invest in assets to deliver an income

Governance

The primary and most common purpose behind the creation of a Local Authority Trading Company (LATC) is to enable a Council to participate in commercial trading activities. Many local authorities have created a LATC for this purpose, with the most common reason given being in order to grow income to protect services.

- The SIB was created in June 2019 following the combining of the Shareholder Board and the Investment Board as noted in the 2018/19 report.
- The Board and its role are noted in the constitution of the Council.
- The Board works in accordance with its Terms of Reference which are reviewed on an annual basis.
- Meetings are scheduled to take place monthly.
- A review of the governance of the companies was conducted during 2021/22. The overarching findings were that the existing governance and reporting processes were sound and provided visibility of decision making and of performance.
- However, improvements were identified and have now been implemented. These include an increase in:
    - reporting and oversight by Members and scrutiny; safeguarding against conflicts of interest; communication between company and shareholder; formal Director training

The Strategic Investment Board is comprised of three members of the Council's Cabinet and is supported by senior officers of the Council, including the Section 151 Officer (Executive Director of Resources) and the Monitoring Officer (Director of Law & Governance).

Members

- Leader
- Cabinet Member for Finance and Resources
- Cabinet Member for Property and Waste
- Cabinet Member for Communities and Community Protection

Advisors

- Chief Executive
- Deputy Chief Executive (Section 151 Officer)
- Director of Law & Governance (Monitoring Officer)

The SIB is further supported by the Asset Strategy Board (ASB) and the Shareholder Investment Panel (SHIP). The role of the SHIP is detailed on Page 6 of the report.

Decision-making Process

The day-to-day operation of each company is the responsibility of the Directors (of each company) with the SIB being responsible for taking decisions on behalf of the Council where these are of a more strategic nature. The extent of this decision-making will depend upon the Council's shareholding and upon terms included in a company's Articles of Association (matters reserved for the Shareholder) and / or a Shareholders Agreement in relation to Joint Venture companies. The Articles of Association for the Council's wholly owned companies stipulate that the shareholder, that is the SIB on behalf of the Council, are required to approve or make decisions in relation to the following matters summarised in the table below.

Decision	**Rationale**
Changes to the Articles	Removes all controls
Appoint and remove Directors	To ensure that the company is appropriately managed and that there is satisfactory governance
Material change in the nature or scope of the business	To ensure companies only undertake activities for which approval has been given and to protect the Council's reputation
Purchase of shares or interest in another company. Acquisitions of any business or any shares.	Significant business decision which may involve further financial risk
Borrowing or the raising of finance (except from SCC). The creation of any security interest (except SCC)	To avoid taking on debt that undermines security for SCC debt (excluding de-minimis bank overdrafts) and to avoid incurring further financial risk
Issuing, withdrawal or buy back of shares	To maintain SCC ownership as originally intended
Enter any Joint Venture, consortium, or partnership	To ensure companies only undertake activities for which approval has been given, in order to protect SCC reputation. To ensure that it is the shareholder that takes decisions that may involve substantial financial risk (rather than the Directors alone)
Selling, transferring, leasing, assigning property or assets (excluding de-minimis and replacement of operational equipment)	To avoid dilution of assets or security in relation to SCC debt
Disposal of any business or any shares	To maintain SCC ownership as originally intended
Entering into an administration order or steps to voluntarily wind up the company	To protect SCC's reputation

The SHIP, an Officer-led panel, chaired by the Director of Finance, Corporate and Commercial (Deputy s151), works within delegated authority limits set by the SIB. The Panel's remit is to review and challenge the subsidiaries performance within year and assist with the approvals and operational workings of the respective companies. This enables approvals to be made in a timely manner so that operational effectiveness is not impacted by an elongated approval process. The SHIP also provides governance, as the client, for projects delivered by any of the subsidiaries and acts as the Senior Responsible Owner. Items that fall outside of the approval limits afforded to the SHIP will still be discussed and scrutinised by the Panel before coming forward to the SIB.

The Council’s Shareholdings

The decision to create a company or to invest in shares is taken by Cabinet, or in accordance with delegated decision-making at the SIB. The decision is made upon the basis of a business case which articulates the financial implications and associated risks for the Council. These proposals are made with realistic and prudent expectations regarding the investment required and the length of time it will take to establish a successful company. The Council recognises that returns will not necessarily be received in the short-term but will contribute to financial resilience in the longer term and, may deliver wider benefits that may supersede financial returns.

Company	Ownership
Halsey Garton Property Ltd	100.0%
Halsey Garton Residential Ltd	100.0%
Surrey First Ltd	100.0%
Hendeca Group Ltd	100.0%
Surrey Choices Ltd	100.0%
Surrey and Kent Commercial Services LLP *	50.0%
TRIC Consortium Ltd	16.7%
UK Municipal Bonds Agency	3.4%

* Trading as Connect2Surrey

Directors

Each company must have at least one person named as a Director – the Council itself cannot act in this capacity. The SHIP has delegated authority from the SIB for appointing (and removing) Directors to act on behalf of the Council. Directors have specific responsibilities in Company Law and therefore the board or panel making the selection will need to ensure that persons with the appropriate skills are appointed. The name of the person(s) appointed to each company is noted in the next section of the report. In the case of Joint Ventures, the person appointed by the Council to act in respect of its shareholding is noted.

Since the last report the following Directors have been appointed:

Hendeca Group – Pamela Vick, Tony Barry
Halsey Garton Property Investments – Charles Maxlow-Tomlinson
Halsey Garton Property – Charles Maxlow-Tomlinson
Halsey Garton Residential - Charles Maxlow-Tomlinson
Surrey Choices – Martin Farrow
Surrey and Kent Commercial Services LLP – Shella-Marie Smith

These directors work alongside the other appointed directors, bringing their valuable experience to the board, and will be responsible for delivering the day-to-day activities of the company in accordance with the strategies and business plans agreed by the SIB.

As Directors, their role is not to provide scrutiny, but to be accountable to the SIB, alongside other directors, for the performance of the company and for their own performance as a Director. The SIB will continue to be the subject for scrutiny rather than individual directors.

Directors appointed by the Council receive no additional remuneration and undertake this role as part of their duties as an Officer or Member of the Council.

Funding

Changes to the Public Works Loan Board (PWLB) lending rules have prevented Councils taking on additional borrowing to invest purely for commercial gain. Unless seeking external funding, this limits the companies to work within the current envelope of investment that has been made to date, or alternatively, make investments where commercial returns are of secondary benefit. Recent proposed powers as part of the draft Levelling Up & Regeneration Bill confirm the Government's long-running concerns that a small number of authorities are taking on very high, disproportionate levels of debt or have become excessively exposed to risk from commercial investment strategies. The government continues to put in place controls to reduce this risk and any changes to future strategies need to be developed in compliance with the Prudential framework. The Council's revenue budget includes an element of income generating investment activity. The Capital, Investment & Treasury Management Strategy 2022/23 set out the extent to which expenditure plans are dependent on achieving the expected net income from investments over the lifecycle of the MTFS, to ensure proportionality. Investment activity is forecast to remain between 2-2.5% of the Council's net revenue budget over this period. Should we fail to achieve the expected return, the Council has earmarked reserves in place to manage one-off fluctuations in investment income achieved.

Company Details

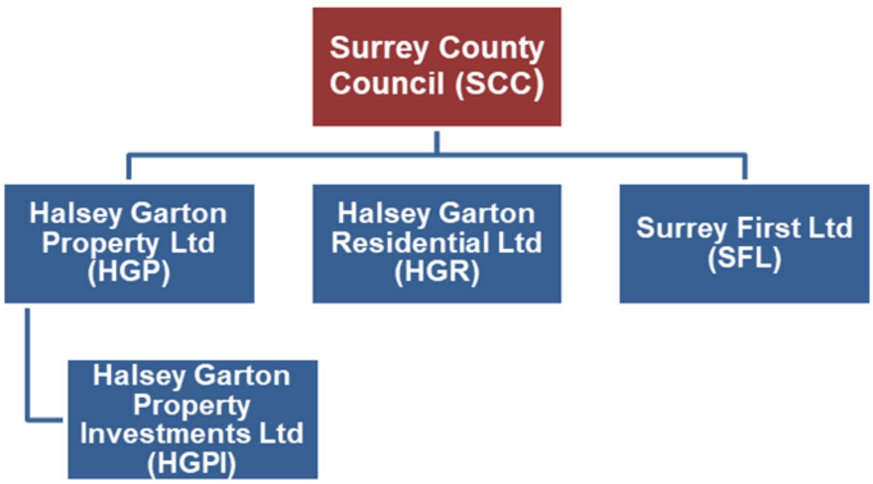
Introduction

The following pages contain information about each company, including a description of activities and purpose, Cabinet approval and date of incorporation and progress made to date. Financial information has been included where this is generally publicly available (e.g., from the statutory accounts of each company) or not commercially sensitive. However, information that is commercially sensitive, such as the future business plans, have been excluded.

Company Profile and Business Case

The Halsey Garton companies were incorporated in June 2014. The initial remit for the companies related to Halsey Garton Property Ltd which was incorporated to fully implement the recommendations of the Investment Strategy approved by Cabinet in July 2013 via Halsey Garton Property Investments Ltd. Halsey Garton Residential Ltd was dormant until August 2020 when it became active following the long lease purchase of 23 properties, now increased to 80. Surrey First (formerly Halsey Garton Property Developments Ltd) remains dormant.

Company Structure



Cabinet Approval	**May 2014**
Ownership	100%
Date of Incorporation	June 2014 Commenced trade in November 2015
Council Investment	Share Capital £93m Loans of £234m
Return on Investment	2016/17 - 2017/18 the company proposed and paid dividends of £2.35m. 2018/19 the company proposed a dividend but later withdrew it. 2019/20 - 2021/22 the company did not propose a dividend. Interest payments to the Council in 2022/23 of £14.3m (2021/22 £14.3m).
Directors	Nicola O'Connor* (resigned June '22), Diane Wilding*, Verity Royle*, Bill Yardley (appointed September '22), Charles Maxlow-Tomlinson (appointed March '23) *Council appointed Officer

Company Profile

The company purchased 17 commercial property assets between November 2015 and December 2018. The portfolio consists of assets in a balance of sectors and is geographically across England. The portfolio remained unchanged up until May 2023 when it disposed of one its assets.

The strategy of the company was revised in 2023 where it was agreed that the Company will:

- Retain a clear and dedicated focus on long term revenue return.
- Adopt a portfolio approach by developing an Annual Company Business Plan.
- Retain existing assets forecast to deliver long term, secure income with minimum volatility.
- If necessary, divest underperforming assets to maximise optimum portfolio performance and recycle capital proceeds to ensure a diversified portfolio which delivers revenue benefits.
- Ensure that a primary consideration when assessing acquisitions is commercial revenue.
- Protect the capital investment as far as possible.
- Identify the availability of short-term loan facilities to leverage opportunities.

- Build up cash reserves to enable delivery of revenue enhancing initiatives of existing assets through capital investment and support, to the extent possible, the Shareholder's wider agenda of Net Zero emissions by 2030.

Progress Update

The company delivered a pre-tax operating profit of £1,941k, well-above budget of £297k due to an increase in rental income and release of bad debt provision. Despite the market conditions, no significant new bad debt provisions were made in relation to arrears owed by tenants at year end.

Rent collection rates have continued to be strong following the Covid-19 closure period, with the largest debtor paying its arears in accordance with a repayment plan due for completion during 2023/24. The company continues to actively manage voids within the portfolio. The company is forecasted to be remain profitable before taxation for the year 2023/24, however, due to general market trends, no dividend is anticipated to be paid from the 2023/24 trading year.

The company owns investment assets with a value of £248m (£291m, 2021/22). This drop in values is reflective of the changes in market conditions over the year. Property capitalisation rates have moved outwards significantly, predominately because of the increase in borrowing rates, consequently bringing values down.

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Halsey Garton
Residential Property Ltd

Cabinet Approval	**May 2014**
Ownership	100%
Date of Incorporation	June 2014 Commenced trade in August 2020
Council Investment	Share Capital £4.1m Loans of £7.0m (as at 31st March 2023)
Return on Investment	No dividends to date Interest payments to the Council in 2022/23 of £0.4m (2021/22 £0.4m).
Directors	Nicola O'Connor* (resigned June '22), Diane Wilding*, Verity Royle*, Charles Maxlow-Tomlinson (appointed March '23) *Council appointed Officer

Company Profile

The Council has provided debt and equity funding for the purchase of 80 residential properties, totalling £11.2m to date.

Progress Update

The company continues to deliver profits in line with the business case. The profit before tax and fair value adjustment in 2022/23 was £215k (£191k 2021/22).

In 2022, SIB approved the appointment of a Managing Director to assist in shaping the strategy of the Company going forward. Following this recommendation, Charles Maxlow-Tomlinson was appointed and is working with the Board to develop a future strategy proposal for consideration by the Shareholder.

SIB Approval	**July 2021**
Ownership	50%
Date of Incorporation	September 2021 Commenced trade in February 2022
Council Investment	Loans of £153k
Return on Investment	£Nil
Board Members	Shella-Marie Smith (SCC)*, Helen Lock (Commercial Services Kent Ltd) *Council appointed Officer

Company Profile

The Council has provided debt funding of £153k, together with a further £153k from Commercial Services Kent Ltd (CSKL), in order to invest in the start-up infrastructure required for a Temporary Resource Recruitment joint venture with CSKL.

Previously, Temporary Resource has been acquired through various Master Vendor agreements with large private sector companies. It has been an ambition of SCC for some time to set up its own Temporary Resource solution, but this was hampered by lack of expertise, inadequate systems, and cost of set up. Following the expiration of the contract with Adecco in January 2022, SCC created a partnership with a neighbouring public sector organisation (Commercial Services Kent) in order to provide the best solution.

Progress Update

Since 'go live', it has been discussed at the SHIP and SIB the various challenges that Connect2Surrey have faced and plans to overcome these to improve the service delivery to SCC, and ensure the financial performance is delivered as planned. The 2022/23 financial performance of £123k loss was £76k ahead of the original business case. The forecast for 2023/24 is expected to be in-line with the business case.

Stronger relationships have been developed with SCC Workforce Teams through ongoing meetings and interactions, and greater adoption of mutual recruitment activities, and there is ongoing engagement at Executive level to provide strategic input with regards to Qualified Social Care hiring. Regular 'agency and supplier' forums are held to ensure maximum engagement of QSW Suppliers to support fulfilment of Surrey CC's demand.

A process is being developed for transfer of existing Interim workers, as well as development of a process for future engagement of all interim recruitment to be managed via C2Surrey, starting initially with any new interim requirements within 'Resourcing' Directorate.

Hendeca Group

Cabinet Approval	**March 2013**
Ownership	100%
Date of Incorporation	June 2013 Commenced Trade in December 2013
Council Investment	£100 Share Capital
Return on Investment	The company has paid the following dividends: 2014/15: £400,000 2015/16 £400,000 2016/17: £440,000 2017/18 £400,000 2018/19: £500,000 2019/20 £400,000 2020/21: £200,000 2021/22 £340,000 No dividend declared for 2022/23
Directors	Lynne Hobbs, Janine Lewis (resigned August '22), Paul Forrester* (resigned June '22), Neil Jarvey* (appointed August '22), Pamela Vick (appointed November '22), Tony Barry (appointed November '22) *Council appointed Officer

Company Profile

Hendeca commenced trading in December 2013 following Cabinet approval as part of the New Models of Delivery strategy in March 2013. The company was known as S.E.Business Ltd, changing name to Hendeca Group Ltd during 2019/20. The company provides business to business (B2B) professional, technical, training and contingency services, enabling the Council to trade in those functions in which it has particular expertise and capacity.

Progress Update

In 2022/23 the company delivered pre-tax profits of £184k. This was a significant drop on the prior year (£836k) due to 2021/22 benefitting from fire contingency service deployment. These profits have been delivered in the main through the contracts held in the fire aviation contingency market. The decision to not pay a dividend for 2022/23 reflects the policy to retain some profit for investment into the company to assist with seeking new opportunities. During 2022/23 Hendeca purchased training materials to facilitate entry into the market for fire safety in construction, being a growing market that complements its existing offer.

The revised business plan approved early in 2023 focuses on the drive to diversify Hendeca's income streams and customer base. It intends to continue investment into identified business opportunities in the B2B training market to help deliver this aim.

Work is continuing to improve the branding and website of the company to take services to market and improve the customer experience.

Surrey Choices
Every Life, Every Chance

Cabinet Approval	December 2013
Ownership	100%
Date of Incorporation	March 2014 Commenced Trade in August 2014
Council Investment	£100 Share Capital Loans of £2.8m
Return on Investment	Nil
Directors	Jane Earl (Chair), Martin Farrow (Interim Managing Director), Rachel Wigley*, Stefan Nahajski (NEDs), Riasat Khan** *Council appointed Officer **Council appointed Member

Company Profile

Choices Ltd was formed in August 2014. Our staff of over 300 provide support for people with learning and physical disabilities, as well as autistic people, with care services across a range of settings throughout Surrey. These include day services, employment support, volunteering, or training opportunities, day and 24/7 respite services, travel training for both children and adults, plus a Shared Lives service which provides short and long-term support in a family home setting. Today, the company has a turnover of c.£14m.

Progress Update

Surrey Choices continues to develop its portfolio of services, with a primary focus on community inclusion, the expansion and development of employment services, with closer links to the NHS in Surrey, vocational opportunities and flexible community-based support. In addition, Surrey Choices is also expanding the Shared Lives service, which is not only cost effective, but delivers excellent outcomes for individuals and has won best UK Shared Lives Provider in the UK in 2022 for the second year in a row.

The company has now successfully completed the Changing Days programme, which developed inclusive models of support enabling people to gain independence, choice and control. The person-centred approach seeks to end segregated day care centres in favour of community hubs which are integrated within local communities. 40% of day support activities are now carried out directly in the community. Lockwood, located on the Slyfield Industrial Estate in Guildford, which was the company's largest segregated day service, was closed at the end of March 2023, with the people either being supported in the community or at other Surrey Choices services.

The budget for 2023/24 reflects a £1m efficiency saving passed to SCC. This saving is the balance of an overall £3.5m three-year efficiency savings programme that has been delivered by Surrey Choices to the council. Further efficiency savings are planned, including the continued review of the property footprint and bringing the provision of transport in house, saving approximately £300k annually. The profit before tax in 2022/23 was £32k, being lower than the previous year of £204k due to cost inflation, particularly staff and transport costs.

Recruitment and retention remain the greatest risks faced by the care sector. However, the company had a better vacancy and retention rate than the care sector average.

Cabinet Approval	July 2014	
Ownership	16.67%	
Date of Incorporation	October 2014	
	Commenced trade in January 2015	
Council Investment	£37,500 Share Capital	
Return on Investment	The company has provided the following dividends-	
	2015: £81,347	2016: £83,821
	2017: £80,219	2018: £93,040
	2019: £90,291	2020: £98,667
	2021: £96,179	2022: £89,758
	2023: to be declared	
Surrey County Council Director	Mike Green	

Company Profile

TRICS Consortium Ltd commenced trading in January 2015, following Cabinet approval in July 2014. The Company provides a service to the transport planning and property development customer community by providing access to a comprehensive database of travel patterns known as trip rates. Trip rate data is used by planning consultants in support of planning applications in order to demonstrate the impact of major developments on local traffic. The database is recognised in national planning policy and is widely used by the planning profession and its use has been given due weight by Inspectors at Planning Inquiries.

The company is a Joint Venture (JV) with five other local authorities, Dorset Council, East Sussex County Council, Hampshire County Council, Kent County Council, and West Sussex County Council. These Councils held the rights to the database under a long-standing partnership arrangement and therefore became the shareholders of the company. The company now owns all Intellectual Property Rights in relation to the database and the brand.

Progress Update

The Company commenced trading on 1st January 2015 when it took over the operation of the database from the incumbent supplier. The company comprises of the Managing Director, recruited to deliver the day-to-day operation of the company, three employees that TUPE transferred from the previous supplier and two further employees recruited to support its recent growth. The company is benefiting from increased memberships with user activity on the increase particularly from the residential development sector. 2022 saw a further increase in members of 1% on 2021, which considering the impact of Covid upon businesses is higher than expected, membership numbers have risen each year since inception.

TRICS has now become a truly international company, with its Australasian Database being released in September 2018. The second phase of this region's database being released in September 2019, with the improved TRICS Surveys being added from this date. It is anticipated that TRICS-commissioned surveys can start within the region in 2023, as Covid has made undertaking surveys in these regions very difficult.

The company continues to deliver profits in excess of expectations and has distributed a dividend to its shareholders each year since its creation, thereby delivering a significant return on investment within a short timeframe.

Cabinet Approval	**Decision taken under delegated approval in September 2015**
Ownership	3.4%
Date of Incorporation	September 2014
Council Investment	£450,000 share capital

Company Profile

The UK Municipal Bond Agency's (UKMBA) objective is to provide an alternative to the Public Works Loans Board (PWLB) as a cheaper source of borrowing for local authorities from the issuing of bonds. The agency, developed by the Local Government Association (LGA), raised equity funds from 56 Councils to provide for operating costs and capital against risks.

The agency aims to provide access to all local authorities to raise external borrowing provided that they meet the criteria set, and at the time of SCC's investment, preferential terms were expected to be provided to those Councils that are also shareholders in the company. It is uncertain whether this commitment will stand in the future.

Progress Update

UKMBA distributed a framework agreement which set out the terms upon which local authorities will be able to borrow from them. Authorities were expected agree to a joint guarantee that would operate if a local authority defaulted on its part of a joint borrowing. Requirement to provide the guarantee has been removed, however an approval of a credit check to borrow is required.

The PWLB's reduction of its borrowing rates by 1% in 2020 introduced a new borrowing benchmark for local authorities and made the lending market more competitive. UKMBA sees market opportunities to issue bonds for councils inside the new PWLB rate and, therefore, continues to receive an increased interest from prospective borrowers. The LGA continues to financially support the agency.

The recent Bank of England base rate rise and the war in Ukraine have also impacted the financial markets. The sterling debt market has been affected with a sharp increase in volatility which contributed to the delays of the Company's planned pipeline of bond transactions in 2021. However, the demand for fixed income securities of various maturities remains strong and UKMBA expects to resume marketing its new bonds in the second quarter of 2022.

While interest remains from local authorities which could result in further bond issues, the lack of activity after the initial bond issue has led to the auditors of UKMBA to continue to state that there is material uncertainty related to going concern. As a result, SCC continue to carry the value of the investment at £nil. Should the performance of the company recover the investment value can be reinstated. However, the treatment adopted removes any future risk relating to the company for the Council.

Glossary

Articles of Association

A company's Articles of Association set the rules (the constitution) for the company. The Articles are filed as part of the incorporation process and are publicly available documents. The objects of the company describe what the company will do. The objects of a company are now deemed to be unlimited, unless the Articles limit them.

The Articles may restrict the decision-making powers of the Directors – these are described as Reserved Matters. The Articles may be changed at any time by a special resolution of the members (the shareholders) of the company.

Companies created by the Council follow the model articles with the exception of the introduction of reserve powers in matters of strategic importance and one or two other minor exceptions.

Assets

A Council owned company may purchase assets from the Council. In disposing of assets, the Council must ensure that it receives appropriate market value and the company in turn will be required to purchase at market value in order to ensure that there is no financial subsidy or advantage that may be deemed as state aid.

The Council will retain property assets unless there is a financial advantage to transfer (for example, where the purpose of the trading company relates to property activities). Market rents will be charged for occupancy of property assets – rents are a pre-tax expense making this arrangement tax efficient and this also ensures that the Council's balance sheet remains strong and is not diluted.

Surrey Choices Ltd purchased operational assets, such as vehicles and musical equipment, at appropriate market values from the Council and this formed part of the initial set-up costs for the company.

Debt Financing

Debt financing provides the funds required to run a business. A company may borrow the money required to grow and develop the business.

Interest on debt is a business expense, and therefore deducted before tax.

Companies created by the Council, such as Hendeca Group and Surrey Choices have been set-up with limited equity funds. Funding for growth and working capital requirements has been provided by the Council under an agreed loan facility. The Council provides loans to enable Halsey Garton Property to buy investment assets.

Directors' Duties

The SHIP is responsible for appointing (and removing) Directors to act on its behalf in relation to companies in which the Council holds shares. Directors' duties are described in the Companies Act 2006 and include a responsibility to promote the success of the company, exercise independent judgement and exercise reasonable care, skill and diligence.

Directors appointed by the Shareholder Board do not receive additional remuneration for their role and are covered by indemnities provided by the Council in respect of financial loss (an extension of the indemnities provided by the Council to staff and members as agreed by Cabinet in March 2013). This does not and cannot extend to negligence, default, breach of duty or breach of trust.

The Council's legal team brief Directors so that they understand their duties.

Group Companies

Companies form a Group if one is a subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. Companies within a Group can take advantage of Group Tax relief. In tax legislation, the Council is a body corporate that can perform the link between LATCs and therefore the losses of one company can be offset against profits of another.

This group status in tax law also provides the Council with the ability to be exempt from stamp duty which would ordinarily apply to property transactions (including the entering into lease arrangements) between group companies).

The Council is required to produce Group Accounting statements which mean that the financial results of its LATC's will be included together with the financial results of the Council. The Council will continue to also produce detailed Annual Statements of Accounts on a single entity basis.

Joint Venture

A Joint Venture company is one that is owned by more than one shareholder, where the shareholders concerned are corporate bodies in their own right. The term Joint Venture is not one that is legally defined and is often used in respect of other arrangements that do not necessarily involve a limited company. For example, a Joint Venture may also be a Limited Liability Partnership or may be used to describe an arrangement between public bodies.

LATC (Local Authority Trading Company)

The terminology "LATC" is often used to describe a company that is owned by a Local Authority (i.e., Local Authority Trading Company). It is not a different form of company and most companies described as LATC's are companies limited by shares, with the shares and therefore the company being wholly owned by the local authority.

Companies created by SCC are most likely to be limited by shares, as this structure ensures that profits can be returned to the shareholder (the Council) in the form of dividend payments and provide the possibility for future sale. It is the most suitable structure for trading activity and enables the Council to create a tax group.

It is possible that other company structures may be applicable in certain circumstances; however, these structures tend to involve the removal of Council control or would mean an inability to return profits-examples are companies that are limited by guarantee.

Limited Liability Partnership (LLP)

A Limited Liability Partnership is an alternative legal structure that is similar to a traditional partnership (e.g., as used by a firm of solicitors) but it limits financial risk whilst still being able to benefit from flexibility of structure, tax, profit distribution and the rights and duties of the partners. A partner of an LLP is called a member and is similar to a degree to a shareholder. A partnership agreement will usually be put in place to set out the rights, responsibilities and liabilities of each member and will specify the way in which the LLP will be managed.

LLPs do not have to pay Corporation Tax – it is “transparent” for tax. This means that each member is taxed in accordance with its own tax status. This is beneficial for the Council as it means that Corporation Tax is not payable on its share of eth profits. An LLP however can only be set-up by a Council in certain circumstances and cannot be established where the purpose of the LLP is purely to trade or deliver an income.

An LLP is permissible for the creation of the “JV” with Places for People since this entity is being established for the purpose of creating a model to deliver benefits to residents from the development of housing and mixed used schemes utilising the Council’s vacant sites. As this is an activity that the Council can undertake in its own right (rather than requiring a company to be set-up) an LLP is an appropriate structure.

Reserved Matters

Reserved matters are important decisions for which the Directors are required to seek and gain Shareholder Approval. These decisions are written in the Company’s articles of association which set the constitution or the rules for the running of the company.

The Shareholder Board has delegated authority to perform these functions on behalf of the Council. The reserved matters of SCC’s companies have been written to ensure that the Shareholder Board is responsible for consideration of issues of strategic importance, take decisions that may involve changes to financial risks or may have an impact on the Council’s reputation.

Share Capital (Equity)

Equity or shares in a company represent the ownership interests. The Equity invested is the amount of funds contributed by the owners to the financial requirements of the company. In a limited liability company, the owners / shareholders lose no more than the amount invested. Equity invested at start-up is evaluated on the basis of assets owned and/or earnings potential.

Financial returns to the shareholders are made in the form of dividend payments. Dividends are not a business expense and are paid from post-tax profits.

Shareholders

The Shareholders (the owners of a company) and directors have different roles in a company. The Shareholders own the company and the directors manage it. The Directors must obtain shareholder approval for decisions where the shareholder has restricted the powers of the Directors – these are called reserved matters. The Shareholder Board has delegated authority to perform these functions on behalf of the Council.

Shareholders’ Agreement

These are agreements between shareholders which are private documents. These agreements set out how the shareholders interact with each other and can define what happens in the event of dispute. A shareholder agreement is only relevant when there is more than one shareholder and is recommended practice for Joint Ventures.

SCC has entered into a shareholder agreement for TRICS Consortium Ltd and in relation to the investment in FutureGov Ltd (in this instance it is called an Investment Agreement but is essentially the same thing).

Support Services

The 2003 Local Government Act provides the ability for the Council to enter into agreements for the supply of goods and services, by and to a LATC. The supply of goods, services and financial assistance must be made without subsidy. The legislation guides the Council to apply CIPFA definitions of total cost in calculating the cost of supplies made to a Trading company. This provides the ability to recover all costs in the organisation, including a proportion of all central overheads, depreciation, capital costs and pension back-funding. This wide definition allows significant overhead recovery in the provision of services to an LATC. The supply of goods and services calculated on this basis will be compliant with state aid legislation.

The arrangements for LATCs should seek to ensure that the overall cost base of the Group is not unnecessarily duplicated or increased as a result of any new arrangements. Therefore, SCC will provide services to an LATC where it is in a position to do so, where these services are fit for purpose for the business and support its strategy and can be supplied at a cost that is competitive. This is particularly important from a Group perspective where costs are relatively fixed, for example in the provision of payroll services where a substantial portion of the cost relates to the system.

TUPE

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protects employees when a business changes to a new owner and apply to "relevant transfers" which may occur in many situations, including service provision or contract changes. In these situations, the employment transfers, employment terms and conditions transfer, and continuity of employment is maintained.

The new employer is therefore required to provide the same terms and conditions to the staff concerned. Alternate provision can be made, e.g., a cash alternative to a lease car, but this alternate provision must be acceptable to the employee.

SCC is required to follow the provisions of the TUPE act. This will apply where a service is being transferred to a trading company, as occurred with the award of the commissioning contract for services to Surrey Choices. A LATC will additionally be required to follow TUPE provisions when taking over a service contract from another supplier – for example, as in the case for Hendeca Group in the provision of IT managed services previously supplied to the customer by another provider.

Teckal

Procurement complications arise where the Local Authority creates a company to supply services that the LA wishes to continue to purchase – be those that were previously in-house or previously provided externally. The Council is not permitted to automatically purchase from a LATC company outside of normal EU procurement rules. The LATC is required to tender alongside other private sector suppliers.

Procurement issues in relation to the purchase of goods and services from a LATC were evaluated in the Teckal case. According to the 1999 Teckal judgement, public procurement rules do not apply to contracts if the control exercised by the contracting authority over the entity awarded the contract is similar to that which it exercises over its own departments and, if at the same time that entity carries out the essential part of its activities with the controlling authority. This judgement has now been codified into a new EU Directive and in UK Law by the Public Contract Regulations 2015.

SCC will need to ensure that arrangements comply when considering transferring activities to a trading company, assuming that the Council wishes to continue to purchase the services. The arrangements for Surrey Choices comply with these considerations.

A LATC falling within the Teckal exemptions will itself be required to comply with the EU public procurement rules, and therefore Surrey Choices is subject these procurement regulations.

Transfer Pricing / State Aid

Transfer Pricing refers to the price at which divisions of a company or a group of companies transact with each other – the terminology relates to all aspects of inter-company financial arrangements. These arrangements have potential implications for the tax authorities since they can be used by multi-national corporations to move profits to countries with lower taxes. The UK has adopted principles of “arm’s length” in tax laws.

State Aid issues would apply where a LATC is established or provided with goods and services and financial assistance at a subsidy.

SCC will need to ensure that it steers an appropriate path or middle ground between issues of transfer pricing (in relation to tax) and those in relation to State Aid. The cost of goods and services and financial assistance (e.g., loans) supplied by the Council to an LATC will therefore be tested against the market to ensure that prices / rates can be justified on an arm’s length basis.