

Shareholder Board Annual Report

Financial Year 2016/17

CONTENTS

Shareholder Board

- Introduction Page 3
- Governance Page 4
- Purpose Page 5
- The Council's shareholdings Page 6
- Decision-making Page 7
- Directors Page 9

Company Details

- Halsey Garton Property Page 10
- S.E.Business Services Page 12
- Surrey Choices Page 14
- Babcock 4S Page 16
- TRICS Consortium Page 18
- FutureGov Page 20
- Municipal Bonds Agency Page 22

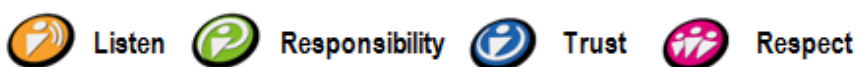
Glossary Page 24

Shareholder Board Terms of Reference Page 30

The council has created trading companies and made investments to enhance the financial resilience of the council



Our Corporate Strategy, Confident in Surrey's future



The council's strategic framework for innovation and investment is supporting the development of new ideas and approaches to enhance the financial resilience of the council. This increased emphasis on commercial activity has led to the creation of the Shareholder Board to monitor the council's trading activity and ensure satisfactory performance and effective risk management. The financial returns delivered by innovation and investment will help to ensure that we continue to deliver quality services to our residents.

The Shareholder Board is an example of best practice governance. It provides effective oversight and alignment with the strategic objectives and values of the council. The Board 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 Shareholder Board provides an overview of the progress we have made in developing new models of delivery and enhancing the financial resilience of the council.

David Hodge CBE

Leader of Surrey County Council

THE SHAREHOLDER BOARD

Governance

- The Shareholder Board was created in September 2013 following the report to Cabinet setting out the council's strategic approach to innovation and new models of delivery.
- The Board and its role is 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 take place at least quarterly.

The Shareholder Board is comprised of 3 members of the council's Cabinet and the Chief Executive. The board is supported by officers of the council, including the Section 151 Officer (Director of Finance) and the Monitoring Officer (Director of Legal, Democratic & Cultural Services).

Members

- Leader
- Deputy Leader
- Cabinet Member for Property & Business Services
- Chief Executive

Advisors

- Deputy Chief Executive
- Director of Finance (Section 151 Officer)
- Director of Legal, Democratic & Cultural Services (Monitoring Officer)
- Head of Strategic Finance (Board Secretary)

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 an LATC for this purpose, with the most common reason given being in order to grow income to protect services. Surrey County Council's first trading company, Babcock 4S Ltd, the Joint Venture with Babcock to provide school improvement services was created in 2003.

The decision to create a company or invest in shares is taken by Cabinet upon the basis of a business case. Like many other councils, SCC has created companies in order to trade and grow income; with profits generated for the council available to support the delivery of the council's Medium Term Financial Plan and enhance financial resilience. This is however not the only reason for the creation of a company or investment in shares.

Surrey Choices was set up in order to safeguard the provision of services to people with learning and physical disabilities. Cabinet approved the creation of a Property Company in order to strengthen the council's ability to invest in a diversified and balanced portfolio of assets in pursuit of the Investment Strategy. The council's investment in FutureGov Ltd enhances the portfolio of assets and supports a company that has a track record of delivering innovative design solutions to local authorities and in social care. The investment in the Municipal Bonds Agency will give the council an alternative source of finance at preferential rates.

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

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, upon the basis of a business case which articulates the financial implications and associated risks for the council.

Cabinet Decision: To create a company or invest in shares	Service Delivery	Babcock 4S
		Surrey Choices
	Trading	S.E.Business Services
		TRICS
	Investment	Halsey Garton Property
		Municipal Bonds Agency
		FutureGov

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 therefore recognises that returns will not necessarily be received in the short-term but will contribute to financial resilience in the longer term.

Company	Ownership
Halsey Garton Property	100%
S.E.Business Services	100%
Surrey Choices	100%

Company	Ownership
Babcock 4S	19.99%
TRICS	16.67%
FutureGov	13.1%

The council's minority shareholding in the Municipal Bonds Agency will depend upon the total equity raised.

Disposals

The council previously held 24% of the shares in Bandstand Square Developments Limited (BSDL) – a joint venture in partnership with Woking Borough Council (WBC) and a private developer Moyallen Ltd to deliver a significant regeneration of Woking town centre. The council and WBC provided development loans for the first phase of the project on an equal basis and at a margin above the cost of equivalent borrowing. In accordance with the arrangements established at the point of investment SCC was able to consider whether to participate in the second phase of the project – being the development of the Victoria Square – its new retail premise, hotel and residential towers. The Leader at his formal decision making meeting in January 2017 determined that it would not be appropriate to provide further funding and therefore WBC are progressing the project as the sole funder and on the basis of the positive benefit to their existing assets in the town, a benefit not available to SCC. SCC therefore sold its shares in the joint venture to WBC to enable simplicity of decision-making for the company and to cease the financial risks to SCC. The shares were purchased by WBC at cost.

The first phase of the project delivered a new fire station for the council and this transferred to SCC in December 2016 by means of the council's purchase of the shares in a special purpose vehicle company which held the asset (BSDL (Fire Station) Ltd). This arrangement helps to mitigate stamp duty costs. The council will be winding up the company and transferring the asset to its direct ownership shortly.

Shareholder Board & Decision-Making

The day-to-day operation of each company is the responsibility of the Directors (of each company) with the Shareholder Board 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 Shareholder Board on behalf of the council, are required to approve or make decisions in relation to the following matters summarised in the table below.

<u>Decision</u>	<u>Rationale</u>
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

Directors

Each company must have at least one person named as a Director – the council itself cannot act in this capacity. The Shareholder Board is responsible for appointing (and removing) Directors to act on behalf of the council. Directors have specific responsibilities in Company Law and therefore the Shareholder Board will need to ensure that persons with the appropriate skills are selected. 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.

Directors appointed by the council receive no additional remuneration and undertake this role as part of their duties as an officer of the council.

Company Details

The following pages contain information about each company, including a description of activities and purpose, Cabinet approval & date of incorporation and progress made to date. Financial information has been included where this is generally publically 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, has been excluded

HALSEY GARTON PROPERTY LTD

Cabinet Approval	May 2014
Ownership	100%
Date of Incorporation	June 2014
	Commenced trade in November 2015
Council Investment	Share Capital £44.1m Loans of £118.7m (as at 31 st March 2017)
Return on Investment	In 2016/17 the company paid a dividend of £750,000 and made interest payments of £3.9m
Directors	John Stebbings & Susan Smyth

Halsey Garton Property Ltd is named after people associated with the history of Surrey County Council.

Halsey was the first Chairman of the council (1893) and Garton was the High Sheriff of Surrey in 1913.

Company Profile & Business Case

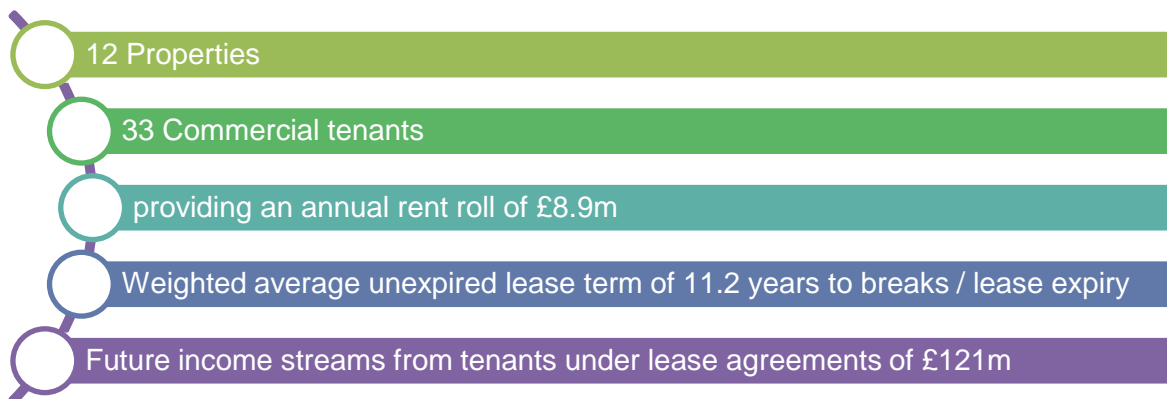
Halsey Garton Property Ltd was incorporated in June 2014 in order to fully implement the recommendations of the Investment Strategy approved by Cabinet in July 2013. The company enables the council to invest in a diversified and balanced portfolio of assets to deliver income and enhance the council's financial resilience over the longer term.

Council Investment

The council provided initial share capital of £1,000 and provides further equity and debt financing to enable the company to progress agreed investments. This is provided on an arm's length basis following the approval of the business case by Cabinet or more recently under the delegated authority of the Investment Board. The council has provided a further £44.1m of equity funds and loans of £118.7m as at 31st March 2017 to enable the company to purchase agreed investment assets.

Progress Report

The company purchased its first asset in November 2015. During 2016/17 a further 11 investment assets were purchased and the company is progressing several purchases which have been approved by the Investment Board.



The company paid its first dividend to the council in 2016/17 of £750,000 and paid the council £3.9m in interest payments. Further information about the company and its investment portfolio is provided by the Investment Board Annual Report. The link between the Shareholder Board and the Investment Board is summarised in the table below.

Investment Board

- Approves the business case for asset purchase or development by HGP
- Approves the provision of finance (equity & debt) to enable HGP to purchase asset
- Reviews and considers the performance of the total property investment portfolio - assets held by both SCC and HGP
- Considers the financial results of HGP from the point of view of the council - e.g. the interest received from providing loans (debt finance) to the company and the expected annual dividend.

Shareholder Board

- Receives and considers the year-end financial accounts of HGP and approves the proposed dividend
- Approves the annual business plan
- Appoints and removes Directors
- Approves changes to the Articles of Association
- Reviews the financial results of HGP from the point of view of the company - e.g. rents received less expenses including interest payable to the council and administration costs.



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 provided the following dividends- 2014/15: £400,000 2015/16: £400,000 2016/17: £440,000
Directors	Rachel Crossley, Liz Mills & Steve Ruddy

Company Profile

S.E.Business Services commenced trade in December 2013 following Cabinet approval as part of the New Models of Delivery strategy in March 2013. The company provides business to business professional, technical, training and contingency services, enabling the council to trade in those functions in which it has particular expertise and capacity.

Business Case

Originally developed in order to enable the council to trade and to provide IT services, including data hosting, helpdesk and application support to a private sector organisation, the company has further developed and expanded to provide further IT contracts and services. Shareholder Board approval followed by Cabinet approval in March 2014, has enabled the company to enter the aviation fire contingency market created as a result of regulatory and licensing changes for UK airports. The company was selected to provide these services under contract in April 2014.

Council Investment

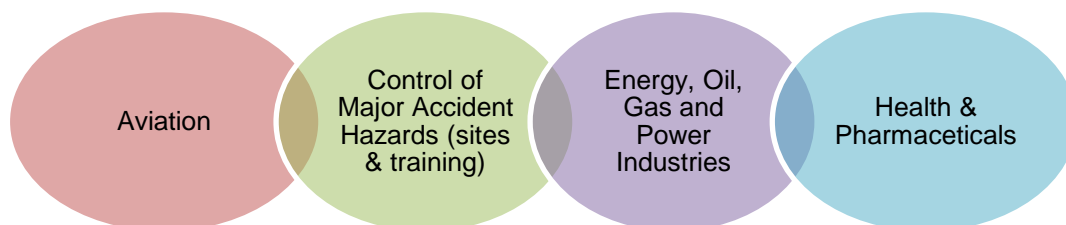
The council provided share capital of £100 and an initial working capital loan to enable the company to commence trade– all lending has been provided on an “arms-length” basis and has been fully repaid.

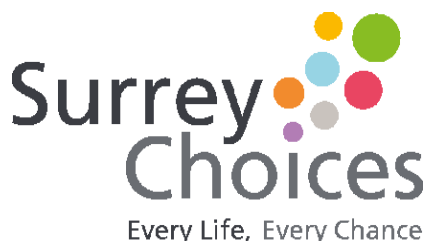
Progress Report

The company has delivered profits in excess of those expected in the Business Case and compared to its approved Annual Business Plan. These profits have been delivered as a result of entering the fire aviation contingency market and by securing a strategic contract with Heathrow Airport., together with the expansion of IT services currently being delivered to two private sector organisations operating in the health sector. The company has paid dividends since its first full year of trading.

The company employs staff as required to deliver confirmed contracts, and engages appropriate contractors, advisors and service providers to undertake the activities of the company. The Company receives services from the council, including contract delivery and operational services, professional legal and finance services and accountancy support services. The council makes an appropriate charge to the company for any services provided, ensuring that the full cost of the activity is recovered.

The company will continue to develop its client base and reputation in the market in order to secure further contracts in target markets from the provision of business continuity services, training and development, technical services and subject matter consultancy and advice.





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 (set up loan of £0.7m and a revolving credit facility of £2.1m)
Directors	Martin Farrow (Managing Director) & Kevin Kilburn

Company Profile

Surrey Choices Ltd commenced trade in August 2014, following Cabinet approval of the business case in December 2013. The company provides people with learning and physical disabilities with a range of services in a variety of settings. The service offer includes day services and support for people who wish to seek employment or become engaged in work, volunteering or training opportunities. The Shared Lives service matches carers who provide support in a family home environment to people with disabilities. The company has developed a respite service creating additional capacity in the Surrey based market. The commissioning contract to supply services to the council triggered the transfer of employees from the council to the company under TUPE regulations in August 2014.

Business Case

The council created the company in order to ensure the sustainability of the services provided and to create a commercial environment in which to deliver efficiencies and continued innovation. Benefits to the council are to be derived from income generated from trading activity from the supply of services to those people with personal budgets and those that privately purchase. The business case demonstrated that the company would make a modest profit within the first five years of operation.

Council Investment

The council provided share capital and loans to enable the company to purchase operational assets from the council and to provide for working capital requirements– all lending has been provided on an “arms-length” basis at market rates of interest.

Progress Report

The company delivers services to the council under a commissioning contract; this is currently a block arrangement meaning that the risk of any volume increase rests with the company rather than with the council. In the first 18 months of operation the council increased the number of new referrals and this led to deteriorating financial situation for the company and losses for the first two years of operation.

In light of this, the Adults Service (ASC) undertook a review of the contract and made appropriate amendments. This review concluded in October 2016 and recognised the importance of ensuring the continuation of the services provided to the residents of Surrey. This has enabled the company to put together a revised business plan which was approved by the Shareholder Board in December 2016. This revised plan, based upon prudent assumptions particularly in terms of non-council business and the delivery of significant cost savings, demonstrates that a break-even position is achievable in 2017/18 with modest profits thereafter.

Changes have been made to the management team following the resignation of the previous Managing Director (MD) in August 2016. An interim MD is currently in post and will manage a smooth handover to the new MD who is expected to start in the summer. The refreshed management team has put in place a number of changes to improve the internal controls and governance environment following concerns expressed in the first formal external audit of the company and these improvements were recognised in the latest report from the external auditor in December 2016. Alongside this the contract management meetings with ASC have been reinvigorated with strategic commissioning meetings taking place regularly with the Strategic Director of ASC and a number of sub-groups established to focus on key areas; including performance reporting and the quality of service outcomes.

BABCOCK 4S

Cabinet Approval	July 2003
Ownership	19.99%
Date of Incorporation	September 2003
Council Investment	£199.99
Return on Investment	The last dividend received was in 2013/14 of £273,000.
Surrey County Council Director	Jason Russell

Company Profile

The Company provides educational support services under a Service Delivery Agreement (SDA) with the council and has developed a range of services to schools. Their services include those related to education, including curriculum advice, governor support and more generic services such as Human Resources support, technology support and facilities management. The company also provides services to other local authorities.

Business Case

The Joint Venture company was formed in 2004 when the council selected a commercial partner to deliver its school support and improvement services. Originally named VT Four S Limited, the company was renamed as Babcock 4S Limited when Babcock Internal PLC acquired VT Education and Skills Limited in 2010.

The Joint Venture was proposed in a time of uncertainty regarding the role of Local Education Authorities. The Government had announced its intentions for the greater independence of schools and predicted that the market for education services would be provided by a small number of larger providers. The council formed the Joint Venture in response to these proposed changes, selecting a partner to enable the services to be traded, utilising the partner's commercial skills to enter the market and providing greater sustainability if the levels of service purchased by the council were to decline.

Council Investment

The council received a substantial consideration from VT Education and Skills upon commencement of the Joint Venture and award of the contract to supply services. Investment required to establish the company in the market was provided by VT Education and Skills, as at the time Local Authorities were operating under a different capital finance regime which restricted borrowing and investment.

Progress Report

The Joint Venture has proved to be successful, delivering a financial return to the council as a shareholder, significant dividends and improving school performance as part of its SDA with the council. However the company is being significantly impacted by changes in the schools market and the changing role of Local Education Authorities. The change to academy status means that a proportion of funding is transferred from the local authority to individual schools and the academy is then responsible for commissioning its own support services. Some academies have chosen to continue to purchase their support services from B4S but others have not. The company has lost a number of significant local authority contracts since 2012 or seen the contract value of those remaining significantly reduce.

The changes in the market will therefore impact upon the nature and viability of the business in the future. The Shareholder Board recognise that the increasing emergence of free-schools and multi-academy trusts will impact on whether a single provider for schools improvement is the best long-term approach and that the company will need to manage these risks and any associated costs, such as redundancy, accordingly.



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: £81,300 2016: £83,800
Surrey County Council Director	Mike Green

Company Profile

TRICS Consortium Ltd commenced trade 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 with five other local authorities, Dorset County 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.

TRICS

Business Case

The creation of the company ensures that the commercial activities of the consortium councils is being undertaken in an appropriate manner and will enable the growth potential of the database into other territories to be fully exploited.

Council Investment

The council, together with the other five local authority shareholders, invested equity funds to provide for working capital and set-up expenses. The funds provided were from balances held by the consortium, created from surpluses from previous activity.

Progress Report

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 and three employees that TUPE transferred from the previous supplier. The company is benefiting from the more optimistic financial climate which has a large influence on activity within the industry. The company is developing plans to expand its reach into international markets, particularly in New Zealand and Australia.

The company delivered a profit in excess of expectations for the first full year of trading due to tight control of set-up costs and the improving economic environment. The company has distributed a dividend to its shareholders each year since its creation thereby delivering a significant return on investment within a short timeframe.

FUTUREGOV

Cabinet Approval	December 2013
Ownership	13.1%
Date of Purchase of Shares	January 2014
Council Investment	£125,000 Share Capital £125,000 Loan Notes
Surrey County Council Director	The council has not appointed a Director since Julie Fisher resigned from the post in March 2016. Susan Smyth attends the board meetings of the company as an observer & advisor.

Company Profile

FutureGov Ltd provides innovative digital solutions and digital design services to Local Authorities and other public sector organisations. It specialises in the children's services and adult social care market. Their products and consultancy services have been purchased by a number of authorities including those in Australia.

Business Case & Council Investment

The investment in FutureGov was undertaken in 2014 to strengthen a partnership that had already delivered innovative products within the social care market. The council's investment of equity and debt finance in 2014 was made alongside investment from Nesta, a charity whose investment function has a track record in identifying commercial opportunities that deliver social value. The debt financing provided by both parties is at market applicable interest rates, with the interest receivable offsetting the funding costs incurred on the initial equity investment. The business case expected that the investment would generate a modest net return to the council over a five year period.

Progress Report

The company delivered a significant growth in sales revenue since the date of investment however this continues to fall short of delivering fully against its ambitious business plan and profits targets. The products sold well in Australia but had limited success within the UK market.

As a result of this, the company refined their business strategy to focus on consultancy services and digital design and frequently successfully competes against the big consultancy firms for business. The company is recognised as a key player in the digital design and transformation public sector market and as a result has returned to profitability, reporting a profit of £313,000 for the year ending December 2016. The company is creating strategic partnerships to assist its ability to deliver bigger contracts and to broaden the service offer.

MUNICIPAL BONDS AGENCY

Cabinet Approval	Decision taken under delegated approval September 2015.
Ownership	Minority
Date of Incorporation	September 2014
Council Investment	£450,000 share capital

Municipal Bonds Agency

Company Profile

The Municipal Bond Agency's 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), has raised equity funds from 56 councils to provide for operating costs and sufficient capital against risks.

Business Case & Council Investment

The council's equity investment will be long-term in nature as the agency is not expected to break-even until at least 2018 / 2019. The agency will provide access to all local authorities to raise external borrowing provided that they meet the criteria set, however preferential terms will be provided to those councils that are also shareholders in the company. This means that, for example, on a loan of £10m a council that is a shareholder would save £15,000 per annum compared to PWLB, and if it were not a shareholder the saving would be about £5,000.

Progress Report

The Municipal Bond Agency has distributed a framework agreement which set out the terms upon which local authorities will be able to borrow from them. Authorities will be expected to pass the agency's own credit checks and agree to a joint and several guarantee that would operate if a local authority defaulted on its borrowing.

This requirement to agree to a joint and severally liable guarantee has created some concerns for local authorities particularly at a time of ongoing financial uncertainty. This together with the continued low interest rate environment and short-term borrowing strategies adopted by a number of local authorities has meant that the first bond issue has not been achieved in accordance with originally anticipated timeframes. The CEO of the Agency confirmed at its AGM in May that the first bond issue is expected in a few months.

The council's expectations for the investment have not so far been met and therefore the Shareholder Board has written to the company and to the LGA to express its concerns on behalf of 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 publically 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 S.E.Business Services 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.

GLOSSARY

Directors Duties

The Shareholder Board are 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.

GLOSSARY

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 provides 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.

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.

GLOSSARY

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.

GLOSSARY

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 S.E.Business Services 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.

GLOSSARY

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. 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.



SHAREHOLDER BOARD

TERMS OF REFERENCE

Overview

The Shareholder Board will exercise the Council's role as shareholder in any company, limited by shares wholly or partly owned by the Council for the purposes of service provision and/or trading activities. The Board acts with the delegated authority of Cabinet to ensure the performance of any such company is satisfactory.

Any reference in these terms of reference to "Company" is defined as a company in which the Council holds shares.

The Shareholder Board may also decide, from time to time, whether to accept proposals to submit a bid to provide goods and / or services which, if successful would commit the council to the establishment of a company (which may include a joint venture company). In these instances, the decision of the Shareholder Board would be ratified in accordance with the council's decision-making process.

Membership

- | | |
|---|---------------|
| • Leader of the Council (Chairman) | David Hodge |
| • Deputy Leader of the Council | John Furey |
| • Cabinet Member for Property & Business Services | Tim Oliver |
| • Chief Executive | David McNulty |

The Director of Finance, Director of Legal, Democratic & Cultural Services and the Deputy Chief Executive will be advisors to the Board to provide open and strong technical advice. Susan Smyth, Strategic Head of Finance, will act as secretary to the Board. Additional advisors may be invited to attend the Board as required.

Purpose

The Shareholder Board will:

1. Have the power to appoint and remove Company Directors
2. Approve and monitor Company Business Plans
3. Approve the allotment of further shares in a Company (whether to third party shareholders or the Council)
4. Exercise any reserved powers in the Articles of a Company
5. Endorse any amendments to Company Business Plans
6. Periodically evaluate financial performance of a Company
7. Agree significant capital or revenue investments proposed by a Company

8. Determine the distribution of any surplus or the issue of any dividends from a Company
9. Consider any recommendation from Company Directors to cease trading
10. Report to the Council annually on trading activity
11. Review the risks associated with trading activities.

The Shareholder Board will not have operational control over Companies. All decisions regarding the day to day operation of each Company, its business developments and commercial opportunities, staff terms and conditions and the development and implementation of its internal procedures, rest with the Directors of each Company.

Relationship to scrutiny

Select Committees will retain their scrutiny function in relation to the Shareholder Board. The Overview & Budget Scrutiny Committee will be able to call the Shareholder Board to account for progress in relation to any Company for which the Council is a shareholder and any returns it is making.

Scope

In respect of Teckal-compliant companies

The Shareholder Board will:

1. Monitor Teckal compliance at least annually.
2. Ensure the Business Plan of a Teckal compliant Company is aligned to the corporate objectives of the Council.

In respect of non Teckal-compliant wholly Council-owned companies

The Shareholder Board will also:

1. Seek to achieve appropriate returns on investment from trading activities.
2. Ensure trading activities are conducted in accordance with the values of the Council.

In respect of any shareholding and/or joint ventures

The Shareholder Board will:

1. Evaluate the return and benefits of the shareholding against the values of the Council.
2. Where appropriate, exercise influence over the company and /or joint ventures in accordance with the values of the Council.

In respect of the submission of a bid which will commit the council to the establishment of a company (or Joint Venture)

The Shareholder Board will:

1. Evaluate the return and benefits of the proposal, including an evaluation of the proposed profit share in a Joint Venture.
2. Seek to achieve appropriate returns on investment from trading activities.
3. Ensure trading activities are conducted in accordance with the values of the Council.

Operation of the Shareholder Board

1. The Cabinet has delegated to the Shareholder Board the authority to take decisions in respect of 100% of the Council's shareholding in any Company.
2. The Shareholder Board will meet quarterly, or as required.
3. The quorum for a meeting of the Shareholder Board is a minimum of 3 members, one of whom must be the Leader or Deputy Leader, who will chair the meeting.
4. The Shareholder Board may take decisions outside of a Company's general meeting as follows;
 - a. At meetings of its members by consensus of those present, unless any member of the Board requires a vote, in which event a majority decision will be taken with each member of the Shareholder Board present having a single vote. The Chairman of the meeting has a casting vote in the event that there is no clear majority; or
 - b. In cases of urgency, by a decision made by the Leader or Deputy Leader in consultation with the Chief Executive.
5. Any decisions made by the Shareholder Board in accordance with 4a or b above, must be notified to the Company's directors as soon as reasonably practicable following such decision being taken.
6. The Shareholder Board may take decisions at a Company's general meeting in accordance with the principles set out in 4a above.
7. The Chairman approves the agenda for each meeting. The agenda and papers for consideration are circulated at least two working days before the meeting. After each meeting, the Chairman approves the meeting notes and actions and signs any resolutions agreed by the Board.
8. The Shareholder Board will review the Terms of Reference annually.

V8: Last reviewed / updated: 21.06.2017