



MIDDLESBROUGH COUNCIL

**WHOLLY OR PARTLY OWNED
COUNCIL COMPANIES**

MINIMUM STANDARD

Introduction

1. This document supports compliance with the Wholly and Partly Owned Council Companies (WPOCC) policy by providing a best practice checklist of the minimum required to be followed when considering establishing a company, oversight during the company's lifetime and how the continued existence of a company should be regularly reviewed.

Development - Development of a proposal to establish a Company

2. Where it has been identified that a company, in some form may be required to achieve the Council's objectives, the following steps must be taken.

Business Case

3. A business case should be developed that considers the need for the company, in line with the Council's Programme and Project Management Policy, that:
 - Sets out the strategic context together with the overall vision and ensure that the objectives for the required activity are clear
 - assesses why establishing a company is the best assessed option against the range of delivery models available to the Council
 - ensure that the costs and benefits – both direct and indirect – are clear and that evaluation is driven by long-term benefits
 - ensure a comprehensive appraisal of the range of options for service delivery in such a way that decision makers are assured that there has been a fair assessment of the delivery models e.g., in house, outsource, partnership working, Local Authority Trading company, Joint Venture, Teckal company etc.
 - sets out the investment and other resources required in the recommended option to achieve the objectives, along with a clear illustration of the true costs of borrowing where this is appropriate.
4. In line with the Council's Programme and Project Policy and supporting framework, it is likely that a full Business Case will also be required that uses the five case model to assess the proposal. Within this, the assessment of any company should also consider how it will be resourced to meet the obligations of this minimum standard in relation to corporate governance; including information governance, legal support, data protection, health and safety, risk, insurance, performance management and HR.
5. Further guidance on the content of the business case can be sought from the Council's Programme and Project Management Framework and the Chartered Institute of Public Finance and Accountancy (CIPFA) detailed 'Local Authority Owned Companies, good practice guidance' (2022).

Stakeholder involvement

6. The LMT lead should ensure that any exploration of a business case for the establishment of a company includes early engagement with stakeholders including:
 - Executive Member(s) and the Mayor, and where the ultimate decision maker is a body other than Executive, politicians that sit on that body
 - The Chief Executive
 - The Monitoring Officer
 - The Section 151 Officer
 - Portfolio Management Office
 - Head of Governance, Policy and Information.

Due Diligence

7. Prior to finalisation of any full business case, a due diligence process should be completed to ensure the above has resulted in a proposal where the financial, legal, taxation and operational implications of the proposed company are understood and the assumptions for its creation are robust.
8. An external review, or an internal review by someone who has not been involved in the process and who has the knowledge and skills to consider the following questions should be undertaken:
 - Are the proposals aligned with the Council's Strategic objectives?
 - Are the desired outcomes from the company clearly stated?
 - Is the proposal consistent with the Council's values?
 - Where other partners are involved is there a clear alignment of expectations?
 - Does the proposal fully articulate the risks to the authority, including financial, reputational and service delivery risks?
 - Would there still be a robust business case for the company if there was a change in the political administration of the Council?
 - Is there a clear rationale for creating the company?
 - Does the proposal fully articulate the whole cost of establishing and maintaining a company including staffing and governance?
 - Does the authority have the right skills in place to successfully deliver a company, including oversight and occupation of key company roles by councillors and members?
9. This will include ensuring the following documents are in place before a Member decision is taken on the principle of establishing a company:
 - A business case
 - A business plan
 - Proposed articles of association
 - A shareholder/member or governance agreement that covers issues such as expected standards in relation to corporate governance,

including the expected risk appetite of the company and how it will be managed

- Commissioner clarity – where a local authority company is contracted to provide services to the local authority (the shareholder) it is advisable to establish a client/contractor split
- Agreements providing for the council's provision of services and (if relevant) provision or transfer of assets and liabilities to the company
- Policy on secondments and / or employment by the Company
- Additional agreements as required, including data protection, records management and information-sharing protocols
- Policy on conflicts of interest
- Documents concerning funding flows – loans and advance payments
- Authority internal policy documents that may apply to the company, such as standing orders and financial and contract regulations
- A clear exit strategy
- Any reserved matters that can only be done in agreement with the shareholders.

Taking the decision

10. At the point a decision is taken to proceed, a detailed implementation plan will be delivered that covers key aspects of good corporate governance including:

- ICT, systems, security, hardware and software
- Staffing
- Banking, VAT and accounts
- Information governance
- Legal compliance
- Records management
- Performance and budget oversight by the Board and Council
- Internal and External audit requirements.

Implementation – Structure, Roles and Responsibilities

11. A Company will need sufficient freedom to achieve its objectives in order to thrive. A commercial entity needs to be able to act with agility to compete with other companies in the market, taking into account changing conditions.

12. The governance of the company will need to ensure that the Council retains effective oversight of the company, thereby protecting its investment and ensuring that trading activities are carried out in accordance with the Authority's ethos and values.

Company Structure

13. The Company's structure should be set up to provide the following:

- Clear formal communication channels between the company and the Council both to the Leadership Management Team lead responsible for

oversight but also to provide formal regular assurance back to the Council on the ongoing effectiveness of the company and its delivery against its business plan and the Council's objectives. This will be on at least a quarterly basis.

- A performance framework that ensures the board are fully sighted on the performance of the company, its risk management and the effectiveness of its internal controls.
- The company, within its governance documents, should clearly articulate its risk appetite as part of a risk management policy and that should be agreed and regularly reviewed by the Board.
- Delivery processes that ensure best value is achieved in relation to investments by ensuring appropriate frameworks are in place to oversee delivery. This could include project management tools, procurement policy, financial management etc.
- Training for proposed Board Members to ensure they understand their proposed roles, expectations, risks they will be taking on, the conflict of interest process and any other relevant aspect of good governance. This should be repeated regularly. Completion of training should be a requirement of ongoing Board Membership. An annual review of Board skills should be completed and the outcome reported in assurance reports to the Council.
- Provision of access to financial data to ensure the Council can maintain its legal obligations in relation to financial reporting.
- Consideration of the financial reporting regime the company will be required to follow
- Provision of external audit of the company's accounts with the presumption that any company using public money would be subject to external audit.
- Internal audit arrangements for the company using either the Council's existing provider or securing an alternative provider.
- A communications plan that sets out how company information will be published to provide the public with information about the operation of the company while also maintaining commercial confidentiality where necessary to ensure the company can operate on an equal footing with its competitors.
- A conflict of interest policy governing company directors and staff. This will cover situational conflicts that will not be permitted including:
 - Executive members holding a portfolio who also serve as a director of a company under the control of the same portfolio
 - Councillors taking shareholder decision in respect of a company of which they are also a director.
 - Officers who serve as director for a company will not also be allowed to undertake the Shareholder Representative role for the Council.
 - Conflicts prohibited by the council constitution.

Roles and responsibilities of the Council

14. It will be the Lead LMT member's responsibility to ensure that the Council establishes the company and maintains responsible for the following

decisions (subject to agreement with partners where it is a joint venture) during the life of the company:

- registering the company and associated persons with Companies House
- drawing up documentation to support the company's governance and structure
- appointing the board chair
- agreeing board memberships and board members' responsibilities
- determining the regularity of meetings
- determining audit arrangements, and
- agreeing how the company should be financed
- identification and agreement of client / contractor splits where the company provides services to the Council.

Roles and Responsibilities of the Company Board's Chair

15. The Chair must:

- Set clear expectations around style, tone and content of board discussions
- Ensure the Board has effective decision-making processes that meet good governance standards
- Ensure there is sufficient challenge involved in major proposals
- Ensure meetings are held without company employees are present in order to facilitate a full and frank airing of views, where that is required
- Ensure that an appropriate level of information is received by the Board in order for informed decisions to be made.

Roles and responsibilities of the Board

16. The Board will:

- Provide leadership
- Model compliance with good governance conduct through its behaviour
- Monitor performance against the objectives and risk
- Evaluate courses of action to achieve objectives and make strategic decisions
- Be accountable for the company's activities to the Council, ensuring regular reporting to the Council.

17. Company Directors will:

- Act at all times in the best interests of the company as required by company law
- Be responsible for ensuring they have the skills and knowledge to undertake their roles effectively
- Act only within their roles as set out in the Company Memorandum and Articles of Association and only use their powers for the purposes

for which they are conferred (this will require a clear understanding of the differences between roles when acting as either an Executive Director of the Company, a non-Executive Director and when acting in other roles outside of the company e.g. Elected Member, officer of the Council etc.)

- Promote the success of the company
- Exercise independent judgement
- Exercise reasonable, care, skill and diligence
- Avoid actual, potential and perceived conflicts of interest by adhering to a conflict of interest policy

18. Executive Directors are working employees of the company, responsible for strategic decision-making and ensuring effective running of business operations.
19. Non-Executive Directors will provide expertise, hold the company to account for its performance and compliance with good governance through constructive challenge and scrutiny.
20. Where there is a requirement for a company to act at 'arms-length' in order to achieve its objectives, strong consideration should be given to appointing a chair who is independent of the Council.

Roles and responsibilities of Shareholder Representative

21. Within the current governance model of the Council, the Elected Mayor determines the Shareholder representative. The function can be delegated to an officer or the Executive. The representative should have due regard to the views of the Shareholder Board when exercising their role as the shareholder representative.
22. Where applicable, depending on the nature of the legal entity, the Council should identify who the personal with significant control is and register them with Companies House.

Roles and responsibilities of a Shareholder Board

23. A formal Shareholder Board should be established to advise the shareholder representative. This Board will provide oversight from the Council's perspective and be the mechanism by which non-Executive Councillors, can hold the company to account. Directors of the Company are required to attend Shareholder Boards to present information as required.
24. Each company will be different, however when establishing the governance, consideration should be given as to how the views of the Board will be given to the representative and then reflected in the business meetings of the Board.

Good Governance in practice – Operating effectively and with integrity

Managing conflicts of interest

25. When appointing Non-Executive Directors, the Council should consider the good practice of having some distance between key authority decision makers and company decision makers in terms of personnel.
26. There should be a conflict of interest policy and supporting register that meets legal obligations and compliance with it is clearly the responsibility of individuals acting in various company roles.
27. All potential conflicts of interest should be referred to the Council's Monitoring Officer and the Company Secretary.

Council scrutiny

28. The LMT lead should ensure the Council's Overview and Scrutiny Board (OSB) is able to exercise its power in relation to scrutiny of the operation of local authority companies as part of its work programme.
29. The Council's Annual Governance statement, considered by Corporate Affairs and Audit Committee, should include reference to how the Council monitors and evaluates the effectiveness of the governance arrangements set out in this minimum standard.

Keeping a record

30. Minutes must be taken for all board meetings that provide a complete record of those present, declarations of interest, discussion, decision, and the rationale for it. They must be kept for 10 years.

Council performance monitoring of the Company

31. Quarterly reports on the performance of the Company, finance reporting, delivery of the company against its objectives as set by the Council, and its risk management arrangements should be considered by the appointing Council body, usually Executive, on a quarterly basis. This report should set out progress against an annual business plan that clearly articulates planned activity to achieve the aims of the company, address any internal or external audit recommendations.

Review – Is the company still the best vehicle to achieve the required objectives?

32. As a minimum, a review of the company, its structure and its delivery should be conducted by the Lead LMT member at least year to assess whether the business case for its establishment is still relevant, whether the company is operating as intended and is effective. The outcome of this review should be referenced in the annual report to the relevant Council committee. The CIPFA detailed guidance should be used to shape this review.

33. Questions to consider when assessing the effectiveness of the company include:

- Does the Board have the mix of skills, experience and knowledge in the context of developing and delivering the strategy, the challenges and opportunities, and the principal risks facing the company?
- Are the purpose, direction and values of the company clearly communicated and does the Board provide effective leadership in these areas?
- Are there succession and development plans in place?
- Does the board work together as a cohesive unit?
- Do key board relationships support the overall effectiveness of the Board?
- How effective are individual directors?
- Is the quality of information provided on the company and its performance sufficient to meet Shareholder requirements?
- Do the quality and timing of papers and presentations to the board support board effectiveness?
- Is the quality of discussions around individual proposals sufficient and is enough time allowed for proposals to be properly considered?
- Does the company secretary/secretariat support the Board effectively?
- Is there demonstrable clarity of the decision-making processes and authorities, looking back on key decisions made over the year?
- Are processes for identifying, reviewing and managing risks in place and functioning well?
- Can the board demonstrate that it communicates with, and listens and responds to, shareholders and other key stakeholders?