

## **GOVERNANCE AND AUDIT COMMITTEE TRADING ACTIVITIES SUB - COMMITTEE**

MINUTES of a meeting of the Governance and Audit Committee Trading Activities Sub - Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Wednesday, 27 April 2016.

PRESENT: Mr R L H Long, TD (Chairman), Mr R J Parry (Vice-Chairman) and Mr C P D Hoare

ALSO PRESENT: Mr R H Bird and Mr D Smyth

IN ATTENDANCE: Mr A Wood (Corporate Director Finance and Procurement), Mr G Wild (Director of Governance and Law), Mr J Pigott (Head of Law), Mr D Smith (Director of Economic Development), Ms J Ward (Regional Growth Fund Programme Manager), Mr J Burr (Managing Director of Commercial Services), Mr G Singh (Barrister), Mr R Patterson (Head of Internal Audit) and Mr A Tait (Democratic Services Officer)

### **UNRESTRICTED ITEMS**

#### **5. Minutes - 29 February 2016**

*(Item 3)*

RESOLVED that the Minutes of the meeting held on 29 February 2016 are correctly recorded and that they be signed by the Chairman.

#### **6. Protocol relating to companies in which KCC has an Interest**

*(Item 4)*

(1) The Director of Governance and Law introduced the report on the Companies Protocol which had last been reviewed in 2012. The current review needed to take account of the changes to the County Council's approach to commissioning.

(2) The Sub-Committee noted that paragraph 7 (d) of the revised protocol listed certain policies and procedures. It considered that as this could lead to a mistaken view that those which were not mentioned were relatively insignificant, this passage should be reinforced by the addition of the words "but not exclusively" after "with particular" at the end of the paragraph.

(3) The Sub-Committee also considered that new paragraph 17 should include a reference to the action that should be taken in the event that if a director who was also a Member or officer of KCC should have a conflict of interest. It therefore agreed to recommend the re-writing of the paragraph after "or an officer of KCC" to read "If it were to give rise to a conflict with the interests of KCC then reference should be made to *the Guidance on Local Authority Companies* referred to in paragraph (2) above."

(4) The Sub-Committee decided that its own role should be further clarified in paragraph 7 (d) through the specification that it “must be assured” that adequate policies and procedures were in place before a company commenced trading.

(5) RESOLVED that:-

(a) the draft amendments to the *Protocol for Companies in which KCC has an Interest* be recommended to the Governance and Audit Committee for approval subject to the revised paragraphs 7 (d) and 17 as set out below:-

(i) Paragraph 7 (d): “what Council policies (if any) are to apply to the company. Where a company adopts its own policies, before it commences trading the Governance and Audit Committee must be assured that adequate policies and procedures are in place with particular (but not exclusive) reference to anti-fraud, bribery, corruption, gifts and hospitality”; and

(ii) Paragraph 17: “As a matter of general principle, the overriding duty of any director in considering an item before the company is to vote in accordance with the interests of that company. In the case of a director who is also an elected Member, or an officer of KCC, if it were to give rise to a conflict with the interests of KCC, then reference should be made to *the Guidance on Local Authority Companies* referred to in paragraph (2) above”; and

(b) the Protocol and Guidance continue to be reviewed bi-annually, unless fundamental changes (for example, legislative changes) necessitate a review during the intervening period.

## **7. Discovery Park Investment Fund - Development of the Fund and changes to governance structure**

*(Item 6)*

(1) The report which was unavailable on the date of publication had been circulated to all Members of the Sub-Committee as well as to Governance and Audit Committee Members.

(2) The Chairman declared this item to be Urgent as the governance arrangements needed to be in place by 1 May 2016 and this was the only opportunity for them to be considered by the Sub-Committee.

(3) The Director of Economic Development introduced the report which set out the changes to the governance structure of the Discovery Park Technology Investment Fund since the Committee had last approved the original governance arrangements in November 2014 (*Minute 2014/7*). At that time, KCC had allocated £5m from the overall Regional Growth Fund allocation to offer equity investments. KCC had not wished to be the sole equity provider and had therefore established the governance structure set out in Figure 1 of the report.

(4) The Director of Economic Development continued by saying that the point had now been reached where the new goal was to enable other private sector investors to invest in the fund.

(5) The Director of Economic Development replied to a question from Mr Bird by saying that each of the private investors was registered in England at Companies House. There was no intention to avoid any tax on the investments made by KCC. He could also give a complete assurance that the partner companies would remain subject to English tax and British legal procedures.

(6) The Director of Economic Development explained that due to state aid rules, KCC could not be a majority partner or shareholder in any of the companies. He agreed with the Chairman's understanding that whilst KCC could not control the affairs of the companies which invested, it would have the ability to withdraw its funding in the event that its registration or tax strategy did not comply with the standards that KCC was obliged to uphold.

Kent County Council took great pains to ensure that the companies in which it invested were of the utmost propriety and reputation. It would also have a veto and control over where that money was invested. KCC had already turned down the opportunity to make some apparently attractive investments due to concerns over some aspect of the company's operation. This approach would continue. KCC could not approve the other shareholders. It could only approve the companies in which it invested. This always included scrutiny of the other shareholders whenever KCC was considering whether to invest.

(7) The Director of Economic Development replied to a question from Mr Hoare by saying that KCC's investment strategy was to take a minority shareholding of no more than 10% in order to ensure that the risk was shared. KCC was also constrained by the rules on state aid which specified that any investment by a public authority had to be on commercial terms using an independent manager who could decide what was and was not a commercial investment. KCC had committed itself to only make commercial investments.

(8) The Director of Economic Development then said that the new structure set out in Figure 2 of the report was recognised by the British Venture Capital Association and complied with the guidance of the European Venture Capital Industry. The reason that other authorities had failed in their attempts to create public authority investment companies was because they had not followed the commercial pattern. The advice obtained was that the structure was robust, both in terms of protecting the public authority and its interests as well as being recognisable to the market place. The structure avoided the pitfalls which often arose when a public authority attempted to upset the balance between its commercial and public goals by over-emphasising the latter.

(9) The Director of Economic Development replied to a question by Mr Parry by saying that the Independent Advisory Board would advise the Leader of the Council who would agree the detailed terms of reference and operating procedures. The advice provided to him (including on compliance) would be given by KCC Legal, KCC Procurement, Geldards and Hogan Lovells.

(10) The Chairman asked whether it was intended that the detailed terms of reference and operating procedures would be submitted to the Sub-Committee. The

Director replied that it was not envisaged that they would be in conflict with the report that was under consideration. It was therefore not proposed to bring a further report. He offered to make them available after they had been put into effect. They would continue to be regularly audited by Internal Audit.

(11) It was agreed that the results of Internal Audit's audit of the detailed terms of reference and operating procedures would be reported either to the Sub-Committee or to its parent Committee.

(12) The Director of Economic Development replied to a question from the Chairman by saying that consideration had been given to the question of whether there should be more than one Director of the various companies. He said that Company Law did not require a company to have more than one Director or even a Company Secretary. He anticipated that once the new arrangements were in place there would be an increase in the number. This was because the current structure had been put in place to best enable KCC to transfer to the new structure. The new Directors of the company into which the assets were to be transferred had not yet been identified and would be carefully vetted before their appointment.

(13) The Director of Economic Development replied to a question from Mr Parry by confirming that one of the 5 members of the New Investment Committee would be an elected Member of Kent County Council, another would be a KCC officer. The other 3 members would be people with a private sector background drawn from outside KCC. Their eventual appointments would be made by the Leader following advice from the present Advisory Board. The recruitment process was currently underway

(14) Mr Parry asked for detail on the advertisement process for the three private sector members of the New Investment Committee as well as the qualities and skills that were being sought. This applied, too to the KCC representatives. He also asked who would chair the Company and how that appointment would be made.

(15) The Director of Economic Development replied that the specification was looking for people with the highest level of the requisite skills. This would include experience of successfully running large private sector funds. He was not sure whether the prospective elected KCC Member had actually been approached and could not therefore be identified. He did have considerable experience in the investment management world. The KCC officer was a very senior member of the Finance Team.

(16) Mr Bird said that performance assessment of the members of the New Investment Committee would be a key issue and that it was particularly important that the mechanism was in place to ensure timely replacement if the need arose.

(17) The Director of Economic Development replied that the County Council in the form of the Investment Advisory Board would receive quarterly reports from the Fund Manager. The Fund would last for 5 years (extendable to 10). An internal rate of return of at least 15% was expected. The remuneration rate for the managers was linked to the performance of the Fund and they would only receive remuneration once a trigger point had been achieved. There was also a separate mechanism for removing people if they failed to perform in other respects. He could give an assurance that, in respect of the new Investment Committee there would be absolutely no reward for failure.

(18) The Director of Economic Development said that the Investment Advisory Board was a long-standing informal body which had been set up when KCC first received its allocation of 35 m from the Regional Growth Fund in order that the County Council's decisions could be informed by a broad group of individuals acting in a personal capacity utilising their backgrounds in banking, the Law and a variety of commercial activities. It reported to the Economic Development Board on the loans that had been made using RGF monies as well as to the Leader.

(19) The Sub-Committee agreed the resolution set out in (20) below by 2 votes to 1. The Director of Governance and Law confirmed that this decision did not prevent the Director of Economic Development from putting the new governance arrangements into operation. The Director of Economic Development also confirmed that although there would be a change of ownership, this would not affect the ability to make any required changes to the way in which the process was managed.

(20) RESOLVED that the proposed governance for the Discovery Park Technology Investment Fund be endorsed subject to ratification by the Governance and Audit Committee at the next available opportunity.

## **EXEMPT ITEMS**

### **(Open Access to Minutes)**

*(Members resolved under Section 100A of the Local government Act 1972 that the public be excluded from the meeting for the following business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 3 and 5 of Part 1 of Schedule 12A of the Act.)*

#### **8. Legal Services - Alternative Business Structure**

*(Item 5)*

(1) The Chairman informed the Sub-Committee that he had been invited to sit on the Board of the company which would be set up under the Alternative Business Structure. This was not a matter which qualified either as a Disclosable Pecuniary Interest or as an Other Significant Interest.

(2) The Director of Governance and Law briefly introduced the report on the Legal Services Alternative Business Structure (ABS) and confirmed that it would conform to the *Protocol for Companies in which KCC has an Interest* if the draft revisions to the Protocol (see *Minute 6 above*) received approval from the Governance and Audit Committee at its next meeting. He also drew the Sub-Committee's attention to the Section 151 Officer's Value for Money Report which was appended to the main report.

(3) During discussion of this item, the Sub-Committee asked for the Shareholder Board chart set out in Appendix 1 of the report to be amended to clarify that it was the Chairman of the Company who would report to the Chairman Head of Paid Service and for those members of the Senior Management Team who were also members of the Board of Directors to be identified with an asterisk. The Director of Governance and Law agreed to make these amendments.

(4) Members also asked for assurance in respect of the impact of the creation of the ABS on the overall Legal Services operation including those members of staff who were to remain in-house. This should include steps taken to ensure staff retention. It was therefore agreed that a progress report would be presented to the Governance and Audit Committee at its meeting in October 2016.

(5) RESOLVED that:-

- (a) approval be given to the governance arrangements for the Alternative Business Structure as set out in the report and its Appendices; and
- (b) a progress report be submitted to the October 2016 meeting of the Governance and Audit Committee with a particular emphasis on those issues set out in (4) above.

#### **9. Consolidated Commercial Services 2014-15**

*(Item 9)*

(1) The Managing Director of Commercial Services presented a report which had arisen out of the Sub-Committee's consideration of Statutory accounts for companies

in which KCC has an interest (*Minute 2/2016*). He briefly summarised the current structure of the Commercial Services business.

(2) The Managing Director of Commercial Services reported that customers of the LASER frameworks had indicated that they placed strong value on KCC being the contracting authority for those frameworks.

(3) RESOLVED that the report be noted for assurance.