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To: Governance and Audit Committee Trading Activities Sub Group - 4
July 2012

Subject: Protocol relating to companies in which KCC has an interest

Classification: Unrestricted

Summary: To report on a review of the existing 'Protocol relating to companies in which KCC has an interest' (the Protocol) and the more detailed accompanying 'Guidance on Local Authority Companies' (the Guidance).

FOR ASSURANCE

INTRODUCTION

1. This report sets down the observations, views and conclusions resulting from a review of the existing 'Protocol relating to companies in which KCC has an interest' (the Protocol) - attached for information at Appendix A - and the more detailed accompanying 'Guidance on Local Authority Companies' document on KNET (the Guidance).
2. This review has been undertaken to determine whether substantive updates and amendments are required to the Protocol and Guidance to ensure there is the requisite controls and governance framework in place in relation to how KCC companies are established and operated.
3. The report groups the observations and views under the following sections:
 - Establishing a company
 - Operating a company
 - Personal liability, indemnities, insurance and conflicts of interest
 - Monitoring the extent of KCC's interests in Local Authority Companies

Finally, a conclusion is provided.

4. Any comments about this review made by the Governance and Audit Committee Trading Activities Sub Group Members at the meeting on 4th July will be incorporated in the report to the main Committee on 26th July 2012.

ESTABLISHING A COMPANY

5. The Protocol is succinct and complete, and cross refers to the more detailed and comprehensive Guidance.
6. The Protocol directs that companies are incorporated only if it is appropriate to do so, and only following the approval of a robust business case (including a cost benefit analysis, assessment of accounting and tax implications for KCC, and risks assessment) by the KCC Cabinet or relevant Cabinet Member.
7. The types of companies that fall within scope, and the specific provisions that must appear in the company's Articles are set down clearly. Furthermore, the Protocol stipulates that certain rules must apply, even if not included in a company's Articles. These rules concern the appointment of company directors, the conduct of those authorised to represent the Council at meetings of the company or of the board, decision making, and expenses incurred; and they must be in accordance with procedures set out in the Council's Constitution, the company's Articles, and Council policies that are to apply to the company.
8. Paragraph 7 of the Protocol states that 'The Council shall only become a member or director of a company following a decision of the Cabinet or relevant Cabinet Member taken in accordance with the decision making procedures set out in the Council's Constitution'. It then makes it clear that when seeking such a decision any report to the Cabinet or relevant Cabinet Member shall include statements about a number of specific matters. One such specific matter, in paragraph 7(d), concerns 'what Council policies (if any) are to apply to the company'. It is recommended that a minor amendment and improvement is made to paragraph 7(d) so that instead it reads:

'what Council policies (if any) are to apply to the company. If no policies have been stated in the Member decision and the company directors do not formally set their own, the policies adopted should default automatically to KCC policies'
9. To avoid the proliferation of unnecessary companies, helpful guidance is provided on when and why it might be appropriate to establish a company.

OPERATING A COMPANY

10. Following the establishment of a company, the Protocol sets down the company directors' duties, as codified in the Companies Act 2006; more detail is provided in the Guidance. It should be noted that a minor update to paragraph 18 (which lists company directors' duties) of the Protocol is required. All seven duties are listed and discussed in the Guidance, however the sixth duty (namely, 'Duty not

to accept benefits from third parties') has been omitted in the Protocol. The Protocol will be updated to include this sixth duty.

11. Paragraph 20 of the Protocol makes it clear that the directors and company officers are responsible for keeping accounts and making relevant returns to the Registrar of Companies. It is recommended that a minor amendment is made to this paragraph so that it reads:

'Directors and company officers are responsible for keeping accounts and making relevant returns to the Registrar of Companies, and in addition are required to lodge a copy of the Companies House Annual Return (showing directors and ownership) with KCC Legal Services and KCC Finance.'

12. In paragraph 12 of the Protocol, Members and officers of the Council running KCC companies are advised they must seek appropriate advice (from KCC Legal Services and KCC Finance) from time to time to ensure that they and the company are operating within the law, specifically where they intend to change or expand the business activities of the company. Although not a fundamental amendment, for completeness, it is recommended that the first sentence of paragraph 12 is updated to read:

'Members and officers of the Council who are running KCC companies must pass a resolution of the company to provide Internal Audit with all information and explanations required to perform internal audits of the companies from time to time. In addition, they must seek appropriate advice from time to time to ensure that:'

PERSONAL LIABILITY, INDEMNITIES, INSURANCE AND CONFLICTS OF INTEREST

13. The Protocol and Guidance provide comprehensive coverage of the issues to be aware of, risks to be mitigated against, actions to be undertaken, and guidance available in respect of personal liability, indemnities, insurance and conflicts of interest.

MONITORING THE EXTENT OF KCC'S INTERESTS IN LOCAL AUTHORITY COMPANIES

14. To ensure that Members and officers of the Council can be aware at all times of the extent of KCC's interests in Local Authority Companies, and its exposure to potential legal, financial, and reputational risks, the Protocol states that the Corporate Director of Finance and Procurement shall maintain an accurate, complete and up-to-date record of all companies (identifying those that are trading) in which KCC has an interest; Members and officers of the Council are required to supply timely information to enable this.

CONCLUSION

15. The Protocol and the more detailed Guidance taken together provide comprehensive information and advice and a sound and complete framework of rules and controls governing when and how 'KCC companies' should be established, and how they should be operated.

16. If adhered to, the Protocol should ensure, importantly, that:

- (i) Companies are set up only if appropriate to do so, and only following the prior mandated approval by Cabinet or the relevant Cabinet Member, with a robust Business Case informing the approval;
- (ii) Companies are run as they should be, within the law, keeping accounts, in line with their Articles, and submitting the relevant returns to the Registrar of Companies;
- (iii) Members and officers of the Council involved in the running of companies are adequately protected and advised in respect of personal liability, indemnities, insurance, and conflicts of interest; and
- (iv) Members and officers of the Council are aware at all times of the extent of KCC's interests in Local Authority Companies, and its exposure to potential legal, financial, and reputational risks.

17. On the basis of the Review above, it is concluded that no substantive updates and amendments are required to the Protocol and Guidance. It is proposed, however, that they be reviewed bi-annually to ensure they remain up-to-date in light of, for example, legislative changes; they would of course need to be updated if fundamental changes required this during the intervening period.

RECOMMENDATION

18. Members are recommended to note the contents of this report for assurance, and to note that the Protocol and Guidance will be reviewed bi-annually hereafter, unless fundamental changes (for example, legislative changes) necessitate a review during the intervening period.