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To: Governance and Audit Committee - 26 July 2012

Subject: Protocol relating to companies in which KCC has an interest (the 'Protocol')

Classification: Unrestricted

Summary: The Committee is invited to approve a number of proposed minor amendments to the Protocol, following an officer review and subsequent consideration by the Governance and Audit Committee Trading Activities Sub Group on 4 July 2012.

FOR DECISION

INTRODUCTION

1. Enclosed at **Appendix 1** is the Report (and Appendix) on the Protocol considered by the Governance and Audit Committee Trading Activities Sub Group on 4 July 2012.
2. The proposed minor amendments considered and supported by the Governance and Audit Committee Trading Activities Sub Group are set down in paragraphs 4, 5, 6 and 7 below.
3. An updated version of the Protocol incorporating the proposed minor amendments is enclosed at **Appendix 2**.

PROPOSED MINOR AMENDMENTS TO THE PROTOCOL

4. 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'
5. 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:'

6. 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 more detailed accompanying 'Guidance on Local Authority Companies' document on KNET (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.
7. 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.'

RECOMMENDATION

8. The Committee is invited to approve the proposed minor amendments to the 'Protocol relating to companies in which KCC has an interest' as set out in paragraphs 4, 5, 6 and 7 above, and incorporated in the updated version of the Protocol attached at **Appendix 2**.