

## **KEY FEATURES OF A LOCAL AUTHORITY COMPANY**

- 1.1 A local authority has the power to form a company under s2 Local Government Act 2000
- 1.2 A company is a separate legal entity to any of the participating councils. It is set up under a Memorandum of Incorporation and Articles of Association which set out its structure and operating rules. The company is owned by its “members” who can be guarantors (for a company limited by guarantee), each promising to underwrite the company, normally to the value of £1, or can be shareholders (for a company limited by shares), each of whom promises to pay to the company if demanded the face value of their share (normally £1). The members of the company meet periodically and take decisions collectively on behalf of the company, normally appointing directors, who are employees of the company, and delegating powers to the directors individually, or collectively meeting as the Board of Directors, to run the company.
- 1.3 Even if it is wholly owned by one or more local authorities, a company is separate from the local authority(ies). As a separate legal entity, it may enter contracts, employ staff, own land and borrow in its own right. If it makes a profit, it is subject to Corporation Tax, unless it is a company limited by guarantee which has secured registration as a charity, which is inappropriate in this case. The company may then distribute any profit after any tax in the form of dividends to shareholders (hence a company limited by guarantee, having no shares, cannot distribute profit to its members).
- 1.4 A local authority can contract with a company for the purchase or sale of goods, works and services, which may assist in the discharge of the authority’s functions. As long as the company is wholly owned by the participating councils, they can contract with the company without having to compete the contracts under EU procurement law. However, a local authority cannot delegate its statutory functions to a company, in the sense of the authority taking decisions on behalf of the authority or exercising statutory powers of the authority, without an order under the Deregulation and Contracting- Out Act 1994.
- 1.5 The legal arrangements for the interface between the company and the councils would include:-
  - a) Members/shareholders agreement between the Councils (and the trading company) governing conduct and operation of the company
  - b) Agreements between Councils and company for service provision
  - c) Agreement between Councils and company for the provision of required staff, equipment, office space and other resources.

- d) Contracts with clients (any external purchasers of the services e.g. other authorities)
- e) Contracts with suppliers / sub-contractors

- 1.6 In terms of structuring a company, if there were initially two participating councils, each would sensibly have equal voting rights at meetings of members of the company. Each authority would agree to the formation of the company and would agree that each authority as a member of the company would send its representative to the meetings of members, and they would take decisions as the company.
- 1.7 Each of the participating councils would enter into a Members' Agreement with each other under which they agreed to participate in the company. They would agree that they would make staff, land and property available to the company. The Members' Agreement would also provide for the formula by which the costs and liabilities of the company would be split between the authorities.
- 1.8 In practice, the day to day management of the company and the oversight of the delivery of services would best be undertaken at Board of Directors level, which would probably be made up of senior officers of the authorities.
- 1.9 Each of the authorities would continue make its own decisions on the relationship with the company.