Establishment of a Development Company

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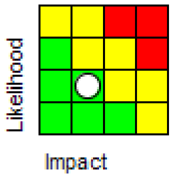
<table>
<tr><th>Risk Code</th><td>FBS17</td><th>Risk Title</th><td colspan="2">Establishment of a Development Company</td></tr>
<tr><th>Risk Description</th><td colspan="4">As a result of the establishment of a wholly-owned Local Authority Property Development Company there is a risk that:
- set up fees exceed budgets (eg legal costs, accounting and auditor costs)
- as the council is a major shareholder of the new entity, it will still be responsible for any liabilities of the company in the event of significant losses occurring.
- that the Company would be limited in the amount of income which can be received from organisations that do not satisfy the “Teckal” test.
- that the delivery of development would not be quicker than currently achievable by the council if the company is intended to be regulated in accordance with Council policies and procedures.
- Conflicts of interest arise between the Council and company
- If the company acts as agent for the Council, the Council will in most cases be bound by the company’s actions on its behalf
- there may be some tax leakage (including unrecoverable VAT)
- The Council may be called upon to bolster company activity through guarantees. State Aid issues may arise on a transfer of assets
to the company
- Tenants have the "right to buy"
- The Council has to establish an Housing Revenue Account</td></tr>
<tr><th>Potential Effect</th><td colspan="4">As a consequence of the risks arising the following may result:
- the costs of establishing the company outweighs the benefits
- failure to expand the Council’s programme of building for rent or sale
- failure to purchase appropriate properties for renovation and rent
- failure to develop Council-owned land and buildings for retail and commercial use
- failure to generate income by utilising the Council’s assets through commercial and residential development
- failure to provide affordable housing for and satisfy the commercial needs of the local community.</td></tr>
<tr><th>Service Area</th><td colspan="2">Director of Resources</td><th>Assigned To</th><td>Sajida Bijle</td></tr>
<tr><th>Review Date</th><td colspan="2">18-May-2015</td><th>Next Review Date</th><td>31-Jul-2015</td></tr>
<tr><th>Current Risk</th><td colspan="4"></td></tr>
<tr><th>Categories</th><td colspan="4">Financial; Economic; Legislative/Regulatory; Competitive</td></tr>
<tr><th>Internal Controls</th><td colspan="4">The budget for establishing the new company will be established and carefully monitored.
The assets will be retained by the Council
A local authority controlled company falls outside the constraints of public sector borrowing and be able to act as a trading and commercial company.
Teckal status relevant only where the Council seeks to place contracts which would otherwise need to be EU procured, with the company, without going through a EU compliant procurement process.
Council reviewing its own constitution and processes to determine whether constitutional changes can be made and how any existing Council processes can be streamlined and/or delivered differently.
The company’s articles of association will determine, to a large extent, how streamlined and efficient the company’s own processes will be.</td></tr>
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	The Council can agree to the officer continuing to act as an officer despite potential conflicts; agree not to take action against him where he is required to act contrary to the interests of the council due to his role as a director; and agree to his or her remuneration as a director. The involvement of senior officers acting as directors to the company will be given careful consideration. Where a “councillor director” is concerned the Council, as owner of the company and controller of the Board of Directors, can agree to his acting as a director even with a conflict. The councillor would need a dispensation to enable him to act as a councillor where a conflict of interest arises. The member must apply for the dispensation in writing. If the Council appoints the company as its agent, the agency arrangement will be documented to give comfort to the Council, the company and any counterparty. This arrangement could be documented through the business plan or a separate agreement between the Council and the company. If profits are minimal (given most business is undertaken at cost for the Council’s benefit) and no material assets transfer into the company this would mitigate any tax liability. A robust business planning process would help mitigate against unplanned cost increases and unacceptable liabilities. Regular monitoring and skilled client contract management to ensure that financial progress does not deviate significantly from business plans and forecasts. In addition, the Council will need to be mindful to ensure it is not distorting the market and falling foul of State Aid and, where there may be any doubt, that it seeks advance advice and clearance. As the Council is not seeking to dispose of assets to the company, best consideration/undervalue issues on disposal are not relevant. The Executive approved funding to seek external advice on the establishment of a company to avoid the need to have an HRA and on the Right to Buy.