



Buckinghamshire & Milton Keynes Fire Authority

MEETING	Executive Committee
DATE OF MEETING	19 November 2014
OFFICER	Mark Jones, Chief Fire Officer
LEAD MEMBER	Councillor Adrian Busby
SUBJECT OF THE REPORT	Delivering Legal Services through an Alternative Business Structure
EXECUTIVE SUMMARY	<p>The purpose of the report is to obtain:</p> <p><i>a) endorsement of the terms of entry into a local authority controlled company (LACC) with Buckinghamshire County Council (BCC) for the provision of legal services through an Alternative Business Structure (ABS) known as "Buckinghamshire Law Plus"; and</i></p> <p><i>b) nomination of an officer – the post of Chief Fire Officer -to be a director of the LACC; and for the post-holder to be the representative of the Authority in its capacity as member.</i></p> <p>At its meeting on 17 July 2013 the Executive Committee resolved to delegate the Chief Fire Officer to negotiate the terms of entry into this ABS; and for a further report be submitted to the Executive Committee before final endorsement.</p> <p>The terms of entry are set out in the Shareholders' Agreement (Appendix 1).</p> <p>The Authority is entitled to appoint a director to the board, who in turn may appoint an alternate, to attend and vote at board meetings. In the event that a general meeting is called, a nominee will be required to vote on behalf of the Authority at a general meeting.</p>
ACTION	Decision.
RECOMMENDATIONS	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1.the terms of participation by the Authority in the company "Buckinghamshire Law Plus" as set out in the Shareholders' Agreement be endorsed; 2. the post-holder of Chief Fire Officer/Chief Executive of the Authority, ex officio, be appointed as a director to the board of the company; 3. the post-holder of Chief Fire Officer/Chief Executive

	<p>of the Authority, ex officio, be authorised to act as the Authority’s representative as shareholder of the company; and</p> <p>4. authority be delegated to the Chief Fire Officer/Chief Executive to make any amendments to the Shareholder’s Agreement needed to gain agreement prior to completion in consultation with the Chairman.</p>
<p>RISK MANAGEMENT</p>	<p>There is no requirement for the Authority to be a founding member of the proposed company. However the conditions under which it might be permitted to join at a later date could be on less favourable terms.</p> <p>The power of the nominated director to appoint an alternate director is an important safeguard for BMKFA as a minority shareholder if, for example, the minority shareholder's nominated director is aware that he will not be capable of contact during any particular period.</p>
<p>FINANCIAL IMPLICATIONS</p>	<p>The proposal is attractive and opens up a number of alternative opportunities that the Authority may be able to exploit in other areas. As the project progresses there will be further clarity regarding, for example: VAT status; assumptions regarding work that would be provided to the ABS; and the income that BMKFA would derive from that versus the charges that would be incurred.</p>
<p>LEGAL IMPLICATIONS</p>	<p>The Localism Act 2011 inserted Section 5A into the Fire and Rescue Services Act 2004 and provided the power for the authority to do (a) anything it considers appropriate for the carrying out of any of its functions, (b) anything it considers appropriate for purposes incidental to the carrying out of any of its functions (whether directly or indirectly incidental) and anything it considers to be connected with (a) or (b)</p> <p>The Legal Services Act 2007 enables the Solicitors Regulation Authority to authorise “Alternative Business Structures” (ABSs), which are companies providing legal services to persons other than the company itself. Such a company, would not be subject to the same restrictions as the authority as to whom it could provide legal services.</p> <p>So it is now possible, using section 5A of the Fire and Rescue Services Act 2004, for the authority to form or join a legal services company, for the company to procure legal services from in-house staff and for the company to secure authorisation as an ABS and resell that legal service to anyone. The authority would then, subject to the terms of the shareholders’ agreement, receive its share of any profits.</p> <p>Section 172 of the Companies Act 2006 provides that</p>

	<p>a director must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole (<i>section 172(1)</i>). In so doing, the director must have regard (among other matters) to:</p> <ul style="list-style-type: none"> • The likely consequences of any decision in the long term. • The interests of the company's employees. • The need to foster the company's business relationships with suppliers, customers and others. • The impact of the company's operations on the community and the environment. • The desirability of the company maintaining a reputation for high standards of business conduct. • The need to act fairly as between the members of the company. <p>It is intended that the LACC will, under Section 233 of the Companies Act 2006, purchase insurance for its directors, against any liability attaching to them in connection with any negligence, default, breach of duty or breach of trust by them in relation to the company of which they are a director.</p>
HEALTH AND SAFETY	None arising from the recommendations.
EQUALITY AND DIVERSITY	None arising from the recommendations.
USE OF RESOURCES	<p>On 14 October 2014 at a meeting of the project board – on which the Chief Fire Officer is represented – governance, monitoring and supervision were discussed. It was agreed that:</p> <p>a) the other directors of the ABS would be as follows:</p> <p>BCC Deputy Cabinet Member Resources – Councillor John Chilver,</p> <p>ABS Compliance Officer Legal Practice - Anne Davies BCC employee (Solicitors’ Regulation Authority requirement),</p> <p>ABS Compliance Officer Finance and Administration – Mark Caprio employee (Solicitors’ Regulation Authority requirement).</p> <p>b) the ABS Board would report to the BCC Business Enterprise and Shared Services Board on a quarterly basis, with the BMKFA director in attendance, to consider costs, income, and dividend proposals made by the Board.</p> <p>The opportunity remains for BMKFA to involve its</p>

	Overview and Audit Committee in scrutiny of the performance of the ABS.
PROVENANCE SECTION & BACKGROUND PAPERS	<p>Buckinghamshire Law Plus Limited was created as a company owned by BCC in December 2013, and an application for registration by the Solicitors' Regulation Authority (SRA) was lodged on 16 December 2013 with BMKFA included in the application as a potential founding partner. The initial application was outside the usual scope of applications received by the SRA as it emanated from a local authority rather than a private company and it took some time to work through the issues from a public law perspective to ensure that the SRA's requirements could be satisfied. Registration was granted on 7 August 2014 - the first local authority company to be authorised by the SRA - with effect from 24 November 2014.</p> <p>The Shareholders' Agreement requires BCC to admit BMKFA as a member and allocate 5% of the shares to it.</p> <p>Link to Executive Committee agenda 17 July 2013 http://bucksfire.gov.uk/files/4114/0631/0051/170713_Executive.pdf</p>
APPENDICES	Appendix 1: Shareholders' Agreement
TIME REQUIRED	30 Minutes.
REPORT ORIGINATOR AND CONTACT	<p>Graham Britten gbritten@bucksfire.gov.uk 01296 744441</p>