



BCPP Joint Committee

Date of Meeting: 6th June 2017

Report Title: Update on Completion of Governance Documentation and Incorporation of BCPP Ltd

Report Sponsor: Governance Sub Group Lead – David Hayward

1.0 Executive Summary:

1.1 The report sets out progress against the final implementation requirements agreed by each authority to complement the establishment of the corporate structures which will constitute BCPP henceforth.

2.0 Recommendation:

2.1 The Joint Committee is asked to note the content of the report.

Background:

3.1 Since the last meeting of Members the documents required to set up BCPP Limited have been finalised, circulated and completed. A brief summary of the changes made to the documents from those originally circulated is appended to this report.

3.2 The changes to the original documents circulated are considered minor and were in the main introduced to ensure the company would not be hampered from operating effectively. A briefing note detailing the changes which was circulated to the Authorities with the final documents is attached at Appendix 1.

Incorporation

3.3 BCPP Limited is, at the time of writing, in the process of being incorporated. By the time that Joint Committee meets it will be established as registered company limited by shares. It will have twelve shareholders in the form of the twelve Administering Authorities and will have a shadow board comprising four officers drawn from the Authorities.

3.4 The interim board will be replaced in the coming months by the board members appointed through the ongoing recruitment process.

- 3.5 The Company will be able to employ staff, make applications to FCA and enter into contracts from this point onwards.

Shareholder Agreement

- 3.6 The Shareholder Agreement will have been completed immediately before the Joint Committee meeting. It will therefore have immediate effect and any decisions listed in “List A” or “List B” will henceforth be a matter for decision by the twelve shareholders. The working assumption is that for the time being at least that shareholder consent will be sought in writing. The first example of this will be the approval of the Chair of the company which will be sought following the recruitment process which is scheduled to take place week commencing 12 June 2017.
- 3.7 The Shareholder Agreement is the key document for dealing with the relationships between the Authorities/Shareholders and contains the relevant dispute resolution provisions

Inter Authority Agreement – Joint Committee

- 3.8 The Inter Authority Agreement has recently been completed. The effect of the agreement is to create the Border to Coast Pensions Partnership Joint Committee. By prior agreement of the Member Steering Group (and thereby the authorities constituting it) the Chair and Vice Chair of the Joint Committee have already been agreed upon.
- 3.9 The Joint Committee will now assume the oversight role envisaged for the creation and future operation and performance of the Company.

Articles of Association

- 3.10 The Articles of Association prescribe the way in which the Company conducts its business and, to a degree, dictate the relationship between the Board and the Shareholders. Any future changes to these Articles will be subject to the agreement of all of the shareholders

4.0 Conclusion:

- 4.1 On completion of all the above processes it will be concluded that the Company will have been effectively established and that it has appropriate governance arrangements to implement and control operational matters going forward.
- 4.2 The appointment of Executive and Non-executive members to the Board over coming months will complete this process.

Report Author:

David Hayward

david.hayward@southtyneside.gov.uk

0191 424 7217

Further Information and Background Documents:

Briefing Note on changes to core documents



Briefing Note

Border to Coast Pensions Partnership (BCPP)

Summary of Changes to Core Legal Documents February to Finalisation (June 2017)

INTRODUCTION

In January 2017 there was an extended period of negotiation of the core legal documents underpinning the establishment of the BCPP Joint Committee and Operating Company. That resulted in draft documents together with an explanatory note and a legal opinion being circulated to the Partner Funds to facilitate the internal approval process. Those documents were circulated by email on 25 January 2017 by Squire Paton Boggs LLP. No changes were agreed to those documents subsequently and all of the Partner Fund approvals have been obtained on the basis that the documents will be completed substantially in the form circulated.

All of the resolutions to proceed with the establishment of the pool contain a provision reserving final approval of the documents to individuals in the Partner Funds – usually the s151 Officer – save for one exception where final approval was reserved to the Pensions Committee.

In the period since the circulation of the “best” drafts discussions have continued and feedback has been received from Partner Funds. In the light of that feedback and in particular to address concerns about the operability of the Company it is now proposed to promote some amendments to the core documents for approval by the delegated officers/bodies.

The purpose of this note is to provide a summary to the changes made to the documents so that Partner Funds can consider the impact of those further changes without having to re-visit entire documents.

INTER AUTHORITY AGREEMENT (IAA)

The changes to the IAA are minimal.

- Clause 7 has been amended to reflect the decision of Member Steering Group (MSG) and the agreement of the affected Authorities that the South Tyneside Council act as Host Authority until further notice and that South Yorkshire Pension Authority should provide the Secretary to the Committee and associated services. The costs of these services will be borne equally between the Partner Funds.
 - The Joint Committee constitution has had an additional power added to it (at Schedule 1 para 8.). This power permits the Joint Committee (JC) to co-opt any additional members that it sees fit on a non-voting basis. It is not contemplated that there will be any immediate need to rely on this provision but it allows the flexibility to do so in the future by approval of the JC only and
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without further reference to Partner Funds and their respective administering authorities.

ARTICLES OF ASSOCIATION

The changes to the Articles of Association are driven by a wish to “future-proof” the constitution of the Company to a degree.

- During the Council approval process it became clear that there was a possibility that there may be a requirement due to potential workloads for additional non-exec directors in the future. Whilst there is little appetite and no intention to increase the size of the Board (and by extension its cost) it was felt prudent to increase the maximum number of directors to eight whilst initially only intending to have a board of six (Art. 17).
- Further analysis of committee representation supported by work of the appointed legal advisors (Eversheds Sutherland) has subsequently been undertaken and further advice sought regarding FCA compliance has been sought and received from Alpha FMC which leads supports the view that an independent Chair and two additional independent non-executive directors can meet BCPP’s initial requirements. However, it is still thought prudent to allow for additions to the Board in future. Any additional directors appointed would have to be approved by the Shareholders. (see below)
- Quorum now requires 50% of directors present to be non-execs and not 2 (Art 11.2) which ensures good governance of having a majority of non-execs taking onto account the chair’s casting vote.

SHAREHOLDER AGREEMENT

The Shareholder Agreement has undergone the most alteration and it is easier to describe the rationale for this.

- Most of the changes come about because of a change in expectation for the timing of appointment of the Chair, the CEO and the other Board members. BCPP Ltd will not have any of these available at the time of incorporation and so the agreement has been amended to take account of this and to allow the Company to be as fully formed and functional as possible as quickly as possible. In order to do that we have provided for an initial appointment of four non exec “placeholder” directors recruited from the Fund’s s151 and Monitoring Officers. There are a number of changes made to reflect this which have not been detailed in this note. These do not materially effect the long term operation of the agreement
 - References to the South Yorkshire Passenger Transport Fund have been removed as following their transfer they are no longer participating in the pool.
 - The other major change to the circulated draft is to push certain decisions in the ongoing operation of the company from 100% decision to “shareholder majority” decisions. This has been understood in the Pool for some time but was not provided for in the original draft documents. For the avoidance of doubt this now means that the first “proper” set of Board members will be
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subject to 100% approval and any changes to that will be a 75% issue. The approval of the first business plan will again be a 100% issue and then subsequent plans will require only shareholder majority approval.

