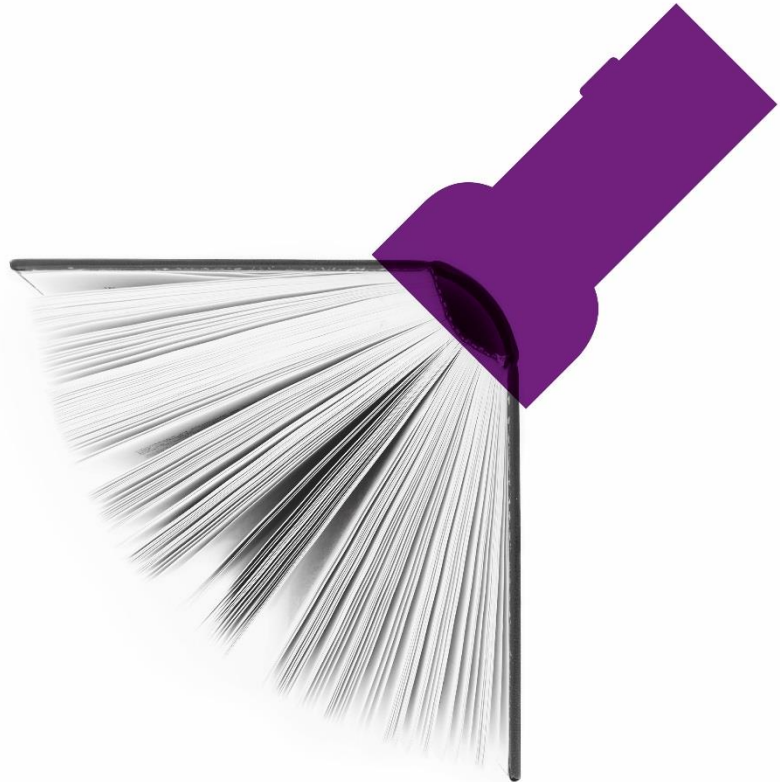


Border to Coast Pensions Partnership
Summary of Pool Governance Structure

25 JANUARY 2017



Border to Coast Pensions Partnership

Summary of Pool Governance Structure

This note has been prepared solely for the administering authorities participating in the Border to Coast Pensions Partnership Pool ("**BCPP Pool**") to provide a summary explanation of the structure of the BCPP Pool governance arrangements and may be circulated by authorities when seeking approval for the structure. We do not accept liability to any other person other than the authorities in respect of this advice note.

The BCPP Pool is the collective term for the range of collective investment vehicles (including an Authorised Contractual Scheme ("**ACS**") that may eventually be used to allow the administering authorities to pool their respective investments. The BCPP Pool will be run and operated by Border to Coast Pensions Partnership Limited ("**the Company**").

This note is intended to be a summary of the BCPP Pool governance structure and the detailed and definitive provisions of the governance structure can be found in the following core documents:

- the Company's Articles of Association,
- the Shareholders' Agreement; and
- the Inter Authority Agreement (containing the BCPP Joint Committee's Terms of Reference and Constitution and the Terms of Reference for the Officer Operations Group).

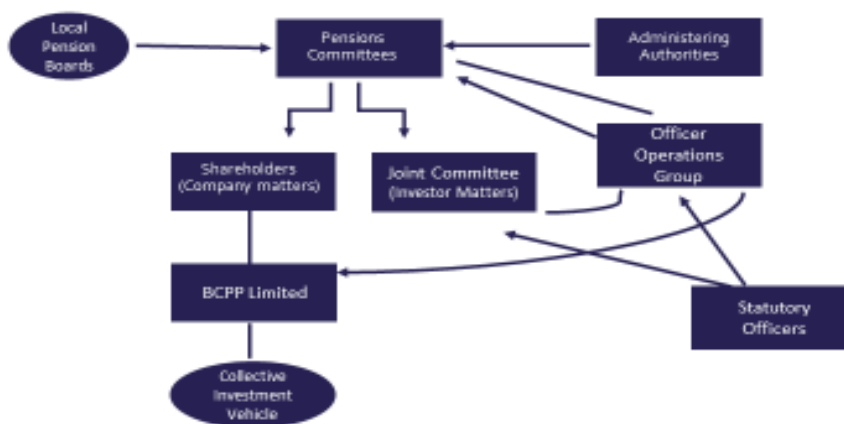
1. Background

1.1 We have been asked to provide a high level summary of the BCPP Pool governance structure, in particular setting out the roles of the structure's key bodies, including the Company, the Shareholder Representatives, the BCPP Joint Committee, the Officer Operations Group and the Statutory Officers.

1.2 Please note that each administering authority still retains its core duties and responsibilities as an LGPS administering authority in respect of its own fund. Administering authorities may need to review their current pension committee structures to see if they will need changing once the BCPP Pool is established and/or to deal with the transition period whilst assets are being moved over to the Pool.

In broad terms the governance structure is summarised in the following diagram:

BCPP Pool Governance Structure



Border to Coast Pensions Partnership

Summary of Pool Governance Structure

Border to Coast Pensions Partnership Limited

- 1.3 The Company will be a private company limited by shares. The Company will be incorporated in England and Wales under the Companies Act 2006 and will have a registered office.
- 1.4 The Company's constitution is contained in its Articles of Association which defines the responsibilities of the directors, the kind of business to be undertaken, and the means, along with the Shareholders' Agreement, by which the shareholders exert control over the Company and its board of directors.
- 1.5 The Company will have twelve shareholders being, Bedford Borough Council, Cumbria County Council, Durham County Council, The East Riding of Yorkshire Council, Lincolnshire County Council, Middlesbrough Borough Council, Northumberland County Council, North Yorkshire County Council, The Council of the Borough of South Tyneside, South Yorkshire Pensions Authority (acting on behalf of itself and the Sheffield City Region Combined Authority), Surrey County Council and Warwickshire County Council. As such it will be a "controlled company" within the meaning of the Local Authorities (Companies) Order 1995.
- 1.6 The Company has been formed to act as an alternative investment fund manager to run and operate one or more collective investment vehicles (including an ACS) to allow the administering authorities to pool their respective investments. In due course the Company will become authorised by the Financial Conduct Authority. Unlike the Company, the ACS itself is not a separate legal entity but is a contractual arrangement.
- 1.7 The Company will be run by a board of directors which will comprise of a non-executive chair and two other non-executive directors and up to three executive directors. The directors are appointed (and can be removed) by the agreement of the administering authorities as shareholders.
- 1.8 The board of directors will meet at least four times a year. The directors have to produce an annual business plan including an annual budget for approval by all of the shareholders.

2. Shareholder Representatives

- 2.1 Company shareholder meetings will be the forum for dealing with the shareholder rights of the twelve administering authorities as individual shareholders in the Company. This is distinct from the Company's board of directors and also from the BCPP Joint Committee (see below).
- 2.2 At Company shareholder meetings each administering authority as shareholder exercises one vote. Certain major decisions (e.g. changes to the Articles of Association, rights in shares, buy-back of shares etc) which would have an effect on the shareholders' rights are usually required, through the Companies Act 2006, to be approved by the shareholders at a general meeting called by the directors of the Company.
- 2.3 The Shareholders' Agreement records the terms of the administering authorities' relationship with each other as shareholders and regulates certain aspects of the affairs and their dealings with the Company. The Agreement provides the framework for the administering authorities to act in a collaborative and coordinated way. To the extent that the Shareholders' Agreement conflicts with the terms of the Articles of Association then the Shareholders' Agreement prevails and the Articles may need to be amended accordingly.
- 2.4 In addition, the Shareholders' Agreement specifies the voting levels for various shareholder decisions. From a procurement perspective, it is important to retain sufficient control over the Company to address 'Teckal' issues.
- 2.5 In particular, the Shareholders' Agreement provides that certain key strategic shareholder decisions require either 100% or 75% approval of all the shareholders (as appropriate) before they can be approved at a shareholders' meeting. These are known as 'reserved matters' and are set out in the Shareholders' Agreement.

Border to Coast Pensions Partnership

Summary of Pool Governance Structure

- 2.6 It is intended that shareholders' meetings will be held at least annually (which is the minimum legal requirement) but may occur more often as required. Quorum for a shareholders' meeting will be nine unless a matter requires 100% approval (see below) when all shareholders will need to attend.
- 2.7 Decisions requiring 100% approval include (without limitation):
- 2.7.1 approving the Company's annual business plan including its annual budget;
 - 2.7.2 initial appointment of directors of the Company (with subsequent removal and appointments requiring 75% approval);
 - 2.7.3 admitting any new LGPS administering authority as a new shareholder of the Company or as a new investor in the BCPP Pool;
 - 2.7.4 extending the activities of the Company outside the scope of its business;
 - 2.7.5 closing down any operation of the Company's business;
 - 2.7.6 altering any of the provisions of the Articles of Association or any of the rights attaching to the shares;
 - 2.7.7 allotting, reducing or cancelling any of the Company's share capital; and
 - 2.7.8 passing a resolution to wind up the Company.
- 2.8 Company shareholder meetings are subject to the requirements of the Company's Articles of Association, the terms of the Shareholders' Agreement and general company law. They are therefore subject to different rules to a BCPP Joint Committee meeting (for example in relation to areas such as access to information and voting rules) and for this reason Company shareholder meetings need to be kept separate from BCPP Joint Committee meetings.
- 2.9 Because an administering authority cannot physically appear at a Company shareholders' meeting, it needs to appoint a person to attend the meetings on its behalf and to cast its vote or state its view. Such a person is representing the authority and acting on instructions from the authority. It does not therefore matter legally whether that person is a member or an officer since no delegated powers are being exercised.
- 2.10 Any individual attending in this role needs to be briefed and instructed before attendance and to report back after each Company shareholder meeting. In practice, if something occurs at the meeting itself which requires a shareholder decision or view then the representative, whether a member or an officer, may be required to exercise some degree of discretion. That exercise of discretion should, so far as possible, reflect the known views of the authority.
- 2.11 The representative, if an elected member, may be the same individual that represents the administering authority on the BCPP Joint Committee. Ordinarily the interests of each authority as a shareholder in the Company ought to be aligned with the interests of the authority in its capacity as an investor/customer in the BCPP Pool, so conflicts of interest are unlikely to arise. However, if they do arise, having different individuals to represent the authority at the Company shareholders' meetings and on the BCPP Joint Committee may help to reduce the potential for conflicts of interest between views as a shareholder and views as an investor/customer and may assist in retaining clarity of the governance functions being carried out. However, this is a matter for each administering authority to decide and should common appointments be made then an appropriate conflicts policy will be required.

Border to Coast Pensions Partnership

Summary of Pool Governance Structure

3. **BCPP Joint Committee**

- 3.1 The BCPP Joint Committee established under the Local Government Act 1972 will be the forum for discussing common investor/customer issues relating to the Company and the ACS.
- 3.2 Each administering authority, in addition to being a shareholder in the Company, will be an individual investor in the ACS (and any other pooled vehicles managed by the Company) and therefore each authority will have investor rights afforded by its contractual agreement(s) with the Company.
- 3.3 For example, in the case of the ACS, the contractual relationship between an administering authority and the Company is contained in a suite of key investor documents. This is made up of the constitutional deed, application form, key investor information, prospectus and FCA handbook of rules and guidance. The administering authority's investor rights are embedded in those documents and cover matters including the right to withdraw from the pooled vehicle, investor reporting (including frequency and content), obligations of the ACS manager to the investors and investor voting rights (for example, on proposed changes to the pooled vehicle).
- 3.4 There may be other arrangements creating other contractual relationships between an administering authority and the Company, for example equivalent documentation relating to other collective investment vehicles that the Company may operate and/or asset management agreements where the Company is managing assets that remain under the direct ownership of an administering authority.
- 3.5 The administering authorities are not delegating their key strategic asset allocation or other investment decision making powers or investor rights to the BCPP Joint Committee. Instead these will be retained for exercise by the individual administering authorities through their pension committees in the normal way, subject to consideration of any recommendations the BCPP Joint Committee may make.
- 3.6 The Terms of Reference and Constitution of the BCPP Joint Committee are set out in the Inter Authority Agreement. It is expected the BCPP Joint Committee will meet at least once a year (with support from the Officer Operations Group) to undertake the activities set out in its Terms of Reference. The activities differ during the set-up phase of the BCPP Pool and when the Pool becomes operational.
- 3.7 The BCPP Joint Committee would not normally make binding decisions on matters covered in its Terms of Reference but would make recommendations to each administering authority for each authority to decide. However the Constitution of the Joint Committee does allow for it to make decisions on matters delegated to it by the administering authorities should they wish to do so.
- 3.8 Where any issues do need to be resolved by the BCPP Joint Committee, these will be decided by a majority vote of those members present. Each administering authority represented on the Joint Committee exercises one vote.
- 3.9 Each authority will be represented on the BCPP Joint Committee by one of its elected members. In accordance with local government law principles, members cannot be mandated how to vote and therefore must use their own judgement when considering Joint Committee business. However, the views of the member's authority will be a factor in any decision.
- 3.10 Given the restricted the role of the BCPP Joint Committee, alternative and less formal arrangements to a joint committee structure could have been considered. However, a joint committee structure established under the Local Government Act 1972 provides a tried and tested structure that delivers a clear and transparent separation of shareholder matters and investor/customer matters.

Border to Coast Pensions Partnership

Summary of Pool Governance Structure

4. **Officer Operations Group**

- 4.1 The Group will be made up of an officer from each administering authority (such as a pension fund officer). The Group is not a legal entity but a working group of officers. The Terms of Reference for the Group are set out in the Inter Authority Agreement confirming how the Group will be comprised, operate and be resourced and funded.
- 4.2 As this is a working group of officers, no statutory functions can be delegated to the Group. The role of the Group is to:
 - 4.2.1 work with the BCPP Joint Committee to support the functions of the BCPP Joint Committee as set out in the BCPP Joint Committee's Terms of Reference;
 - 4.2.2 provide a central resource for advice, assistance, guidance and support for the BCPP Joint Committee (and also if requested for the administering authorities as a collective group of investors in the BCPP Pool);
 - 4.2.3 provide technical support at meetings of the BCPP Joint Committee, for example by proving and delivering performance management reports for the Joint Committee on all aspects relating to the provision of services by the Company; and
 - 4.2.4 act as a conduit for the BCPP Joint Committee to communicate back to the respective authorities and/or direct to the Company as appropriate.

5. **Statutory Officers**

- 5.1 In addition to the Officer Operations Group, Statutory Officers e.g. the section 151 officer and monitoring officer from each administering authority will individually and collectively support the administering authorities as shareholders, the BCPP Joint Committee and the Officer Operations Group.
- 5.2 It is not intended that there be a formal Statutory Officers Group but the relevant officers will exercise their statutory functions individually and/or collectively as the need arises.

Eversheds LLP

25 January 2017

Privileged and confidential

For more information, please contact:

Gary Delderfield

Partner

D: +44 (0)121 232 1786

Int: +44 121 232 1786

M: +44 (0)782 691 8202

GaryDelderfield@eversheds.com

115 Colmore Row
Birmingham
B3 3AL

eversheds.com

© Eversheds LLP 2016 Eversheds LLP
is a limited liability partnership