

Scheme of Delegation in relation to Border to Coast Pensions Partnership

June 2023

1 Introduction

- 1.1 This document was approved by South Yorkshire Pensions Authority (the "Authority") on the 8th June 2023. It is a key element of the Authority's internal control arrangements. The Scheme is reviewed annually by the Head of Governance.
- 1.2 This document sets out:
- (a) The arrangements by which the Authority exercises its functions as a shareholder in Border to Coast Pension Partnership Limited ("**BCPP**" or the "**Company**").
 - (b) How the Authority discharges its functions under the Inter-Authority Agreement between the Authority and the other Councils who are parties to the Joint Committee that oversees the operations of BCPP.
- 1.3 The rights and obligations of the Authority as an investor in certain investment products provided by BCPP are governed by the relevant investment documents so they are not dealt with here. However, the Director has delegated specific responsibilities to managers within the Authority in order to facilitate the day-day-day management of those investments.

2 Rights and Obligations of the Authority as a Shareholder in BCPP

- 2.1 The Authority owns two different classes of shares in BCPP: an A share (which carries the right to vote) and non-voting B shares, which represent regulatory capital as required by the Financial Conduct Authority. Both A and B shares carry equal rights as between Shareholders.
- 2.2 Two constitutional documents govern the corporate operations of BCPP: the Articles of Association and the Shareholders' Agreement. It is in the Shareholders' Agreement that the shareholders exercise control jointly over BCPP. Accordingly, BCPP cannot carry out any actions that are listed as 'Reserved Matters' without the consent of the Shareholders. There are two types of Reserved Matters, those requiring unanimous consent of the Shareholders (the 'A List') and those requiring a two-thirds majority consent of the Shareholders (the B List). The Reserved Matters are set out in full in Schedule 1 to the Shareholders' Agreement.
- 2.3 The A List matters include:
- Extending the activities of the Company, closing down its operations, merging it.
 - Giving guarantees or indemnities outside the ordinary course of business.
 - Entering into any kind of agreement that is likely to result in the Company being managed other than by its directors.
 - Winding up the Company or placing it into administration.
 - Redeeming, buying, reducing or cancelling share capital other than in accordance with the Shareholders' Agreement.
 - Admitting another shareholder into BCPP.
 - Amending the Articles of Association (unless required by the FCA).
 - Entering into litigation other than for debt collection of not more than £500,000 or non-material claims involving losses of less than £1m.
 - Taking out a loan for more than £5m.

- Forming or acquiring a subsidiary.
- Transferring, leasing or selling material assets outside of the ordinary course of business.
- Making a distribution or paying a dividend.

2.4 The B List matters include:

- Appointing or removing the Company's auditors.
- Altering the Company's accounting reference date or making any significant changes to the Company's accounting or reporting practices.
- Approving the remuneration policy for any directors from time to time.
- Incurring capital expenditure of more than £5m (unless permitted by the Strategic Plan).
- Entering into or varying a lease exceeding 5 years or with an annual rent in excess of £500,000.
- Approving a director's actual or potential conflict of interest which would preclude participation in Board meetings.
- Appointing the Chair and any Director.
- Approving BCPP's strategic plan (including its annual budget) and
- Removing any Director or the Chair.

2.5 In addition to the above voting rights, the Shareholders' Agreement and Articles of Association permits shareholders to attend board meetings of the Company as non-voting observers.

2.6 The obligations of the Authority stemming from the Articles of Association and Shareholders' Agreement are principally to:

- Maintain its shareholding (and not seek to transfer the shares other than in accordance with the relevant powers).
- Subscribe for any necessary additional capital required by BCPP.
- Pay an annual operating charge to meet agreed expenses of the company.
- Comply with certain undertakings of the Shareholders, including acting in good faith towards the other Shareholders.
- Refer disputes to the Authority's Chief Finance Officer (known within the Authority as the Assistant Director – Resources).

2.7 The BCPP governance documents do not prescribe who has the right within any Shareholder to vote or attend meetings since these matters are to be dealt with by the respective constitutional documentation of the participating Shareholders. In the case of the Authority as the legal entity, which is the Shareholder, it has determined that the power to exercise voting rights shall be exercised by the Head of Governance (who is also responsible for recording how he/she has voted on behalf of the Authority).

2.8 However, the Head of Governance must consult with the Director, the Chair and section 41 members in relation to all A List matters (and, where time allows, all members of the Authority). The same consultation obligations apply in respect of the following B List matters:

- Approval of BCPP's remuneration policy.
- Strategic plan and annual budget.
- Capital expenditure in excess of £5m and appointment and removal of Directors.

In all other cases, the Head of Governance is required to consult with the Director and the Assistant Director – Resources, copying the Chair on any intended votes.

3 Joint Committee rights and responsibilities

- 3.1 The Authority's rights and responsibilities as a member of the local government joint committee agreement governing the oversight of BCPP under the Inter-Authority Agreement ("IAA") are also expressed to be equal to that of every other member of that joint committee. The Authority accordingly has a single vote. Any amendments to the IAA (which therefore includes its terms of reference) have to be agreed by all parties.
- 3.2 The primary purpose of the Joint Committee is to have oversight of the investment performance of the vehicles operated by BCPP and provide effective engagement with the Authorities to encourage best practice, transparency, and accountability. Some of its activities include:
- (a) Considering issues and providing feedback on proposals (from BCPP).
 - (b) Reviewing and commenting on requests for the creation of new investment propositions.
 - (c) Reviewing and commenting on the range of investment propositions offered.
 - (d) Formulating and proposing common policies for voting, ESG and conflicts.
- 3.3 The constitution of the Joint Committee is set out in Schedule 2 of the Inter Authority Agreement. This includes:
- (a) The Joint Committee consists of one elected member appointed by each Authority, with no prescribed term (the Authority is represented by the Chair).
 - (b) Meetings will be held at least once per year, with at least 5 Business Days' notice provided.
 - (c) The Chair and Vice Chair are appointed by the members of the Joint Committee for a term of 2 years, with a maximum of 2 terms.
 - (d) 60% of members must be in attendance for a meeting to be quorate.
 - (e) If there is urgent business, the Host Authority may, in consultation with the Chair and Vice Chair, take decisions on behalf of the Joint Committee. It will, as far as reasonably practicable, communicate the intention to use this power to the other Authorities before it is actually used. Any such decisions will be reported at the next meeting with an explanation of the need for urgency.
- 3.4 The IAA provides that the Joint Committee designates one of the Authorities to act as the Host Authority for the purpose of entering into contracts and any other BCPP related activity where a legal person is required. Currently the Host Authority is South Tyneside MBC, as the administering authority of the Tyne and Wear Pension Fund. The Host Authority is indemnified by the other Authorities against any liabilities incurred due to its role.

- 3.5 The Joint Committee also designates an officer to be the Secretary to the Joint Committee. Currently this is SYPA. The person who exercises this function on behalf of SYPA is the Head of Governance. Additional support to the Joint Committee is provided by the Officer Operations Group, a group of officers appointed by the Authorities to provide a central resource for advice, assistance, guidance, and support. This includes providing technical support at meetings and acting as a conduit for the Joint Committee to communicate with the Authorities generally and BCPP.