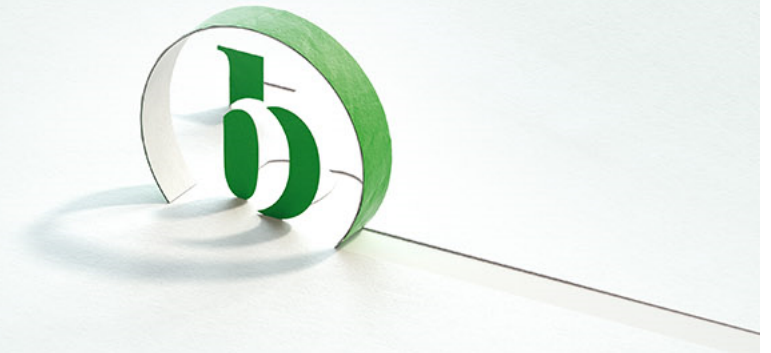


Bevan Brittan 

PORTSMOUTH CITY COUNCIL

Shareholder Committee - Training Session



Agenda

- Use of Company
- Board v Shareholder function
- Duties of Board
- Board composition and conflicts
- Role of Shareholder Committee
- Formation of Shareholder Committee
- Regulation of Shareholder Committee

Use of a Company

- Separate legal identity
 - Risk/ liability
 - Enter contracts
 - Perform commercial activities
- Relatively simple regulatory regime
- Directors subject to statutory and common law duties



Board v Shareholder Function

- Board operates the company
- Shareholder Committee overseas/ scrutinises/ holds to account the board
- Articles of association
- Shareholders Agreement



Directors – their role as a Board

- The board of directors is the company's decision-making body, responsible for the company's activities, its prosperity and future
- Direction, decision-making and leadership must come from the board of directors first if they are to be embedded anywhere else in the company



Statutory general duties under the Companies Act 2006

- To act within powers
- To promote success of company
- To exercise independent judgment
- To exercise reasonable care, skill and diligence
- To avoid conflicts of interest
- Not to accept benefits from third parties
- To declare interest in proposed transaction or arrangement

Composition of board

- We would typically advise against:
 - members
 - must disclose any potential conflicts of interests; and
 - observe the requirements of the code of conduct of the Council required under the Localism Act 2011
 - bias or predetermination
 - statutory officers (monitoring officer, s.151 officer and the head of paid service)
- "Retained Client" role - where most knowledgeable individuals have company role the Council is not properly advised
- Remuneration – members v officers



Shareholder Role

- Delegated by Cabinet to Shareholder Committee
- Corporately - no obligations/ duties (ie. statute/ articles/ SHA)
- Oversight and scrutiny of Council investment
 - monitoring issues
 - reporting issues up the chain

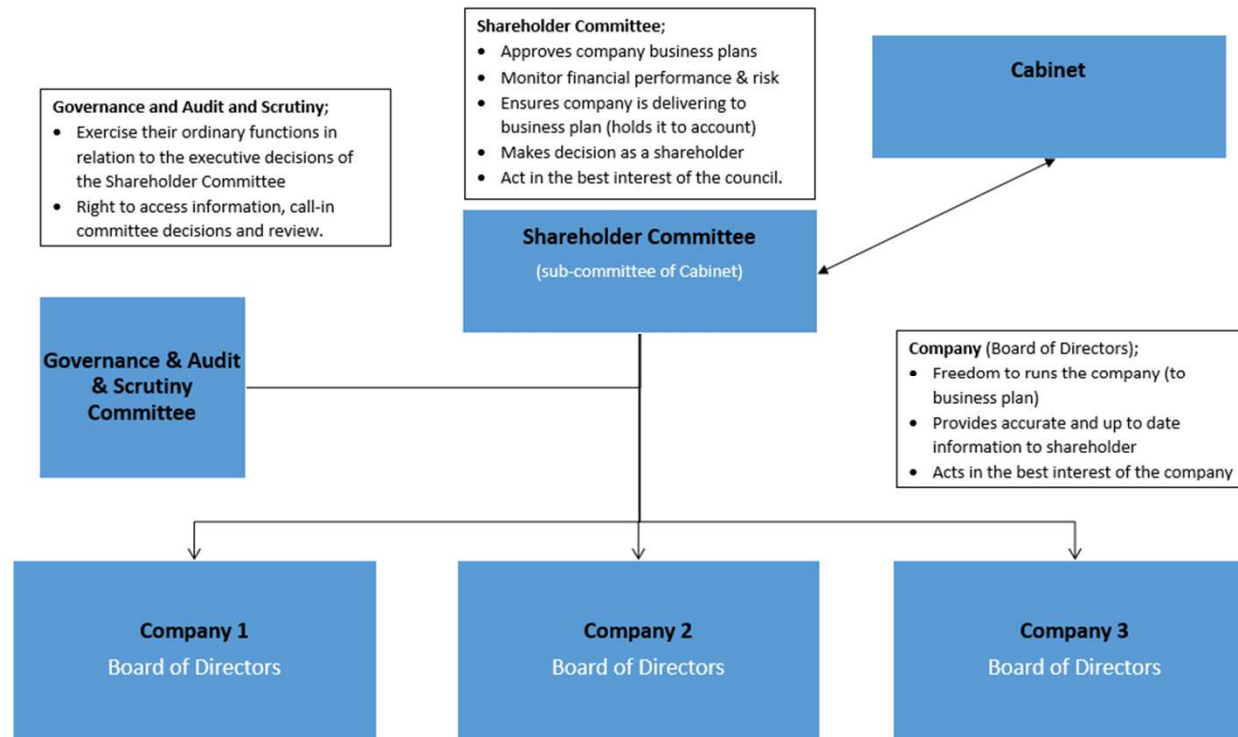


Shareholder role

- Statutory oversight
 - Changes to the constitution of the company
 - Declaring a dividend
 - Approving the financial statements of the company
 - Winding up of the company by way of voluntary liquidation
 - Shareholder's reserve power
 - Appointing/ removing directors (in addition to board if relevant)
 - General meetings as requested (generally annual)
- Possible additional oversight
 - Approving annual business plans
 - Requiring/ receiving reports
 - issues/ regular finance-budget updates/ regular meetings
 - Approving reserved matters



The Shareholder Committee



Formation of committee

- Sub-committee of the Executive
- Best practice
- LLG Guidance '*The Governance of Council Interests in Companies*'
- Common governance structure – e.g. London Borough of Havering, East Hampshire District Council, Havant borough Council

Regulation of Shareholder Committee

- Duties of confidentiality
 - Members - Code of conduct
 - Officers – employment contracts
 - Non Disclosure Agreements
 - Duties under Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR)
 - Exemptions – s.36 prejudice to effective conduct of public affairs, s.40 personal data, s.43 prejudice to commercial interests
 - NDA should acknowledge (as with any contract) that the Council is subject to FOI and EIR and may be required to disclose certain information:
 - the Council will consult with the other party before doing so
 - the ultimate decision lies with the Council as it *cannot fetter its discretion*
 - ICO could force disclosure



Any questions?

Thank you

Birmingham | Bristol | Leeds | London

www.bevanbrittan.com

The information in this presentation is general in nature and is not intended to apply to specific circumstances.
It should not therefore be regarded as constituting legal advice.