

Committee: Cabinet

Date: 25th March 2019

Wards: All

Subject: Creation of a Holding Company

Lead officer: Caroline Holland

Lead member: Councillor Mark Allison

Contact officer: Paul Evans

Recommendations:

1. Approval in principle of the creation of a Holding Company using a Separate Groups Model to form a CHAS group structure.
 2. Delegate authority to the Director of Corporate Services to finalise the creation of the holding company and to approve and enter into the associated legal documentation.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. As part of a programme of commercialisation, the Council has established wholly owned companies, one of which is CHAS 2013 Ltd (CHAS).
- 1.2. CHAS is a company limited by shares, wholly owned by the Council. It currently provides both desktop and onsite supplier/contract risk management assessment and services.
- 1.3. CHAS and the Council have expansion plans, initially to include the extension of assessments and guidance relating to improved supply chain risk management, then extending the service beyond just the supplier/contractor organisations to their employees and to the management of plant and equipment assets, The services are applicable across multiple markets and geographic sectors.
- 1.4. CHAS has share capital of one ordinary fully paid share of £1. The company is providing chargeable services to over 30,000 organisations, the profit and loss account for March 2018 shows a turnover of £7.83 million and operating profit of £1.7 million.
- 1.5. As part of this activity, the Council wants to ensure there is a suitable structure in place to facilitate the effective and appropriate operation of activities in relation to CHAS.
- 1.6. The overall objectives which a new group structure could achieve can be summarised as follows:
 - Provide for shareholder oversight but keeps the governance tiers proportionate to enable operating in a commercial environment (Governance Objective);
 - Provide a suitable framework for managing risk across different companies and future expansion of CHAS in terms of service lines and geography (Risk Objective);

- Provide a financial and tax efficient structure for the Council across the different companies (Finance and Tax Objective)
- Provide accommodation of additional corporate entities, either wholly or jointly owned in the future (Future Flexibility Objective).

2 DETAILS

- 2.1. The Council has looked at various established and proven models with regards the best group structure for the future of CHAS.
- 2.2. The Separate Groups Model has been identified as the most appropriate model that should be adopted.
- 2.3. This model will entail companies being formed in groups e.g. a CHAS group for possible new linked ventures in the future. Each group will consist of a mid-company (being a wholly owned subsidiary of the Council) and set of subsidiaries to the mid-company. A diagram is attached to this report as Appendix 1, which provides a diagram of how the structure works. The mid company would have the option of either being a holding company that holds the subsidiaries who are engaged in the commercial activities or it could engage in activity itself. Each group of companies will have a separate direct relationship with the Council, as the owner of the mid-company.
- 2.4. With regards the Governance Objective referred to above in paragraph 1.5, the clear separation of groups will enable the different groups to have different levels of governance oversight and control compared to a model where the Council would just have a single corporate relationship with a holding company and the holding company would then have a separate direct relationship with the subsidiaries it owns (the Single Parent Company Model).
- 2.5. As to the Risk Objective (see above paragraph 1.5), the presence of the mid-companies could facilitate the creation of separate vehicles and the effective subsequent management of those and through that could improve the risk management across the activity.
- 2.6. With regards the Finance and Tax Objective the mid-company of each group can receive dividends. Dividends paid by the mid-company to the Council will not be subject to tax because of the exemption from corporation tax on income for local authorities. However, if the Council owns two mid-companies, those two holding companies would not be able to form a larger group for corporation tax purposes and so would only be able to surrender losses within the smaller groups. Although any net tax losses within a group would be able to be carried forward, it may take longer to use those losses than would be the case if the companies could exchange losses within a larger group. This model however would not prevent the companies forming a larger group for VAT and SDLT purposes. If a larger VAT group could be formed, services can be provided between the companies in the group without a VAT charge arising which could provide a cash flow advantage.

- 2.7. For the Future Flexibility Objective, individual companies and businesses can be added to the structure either through incorporation or acquisition and either wholly owned by the Council as a direct subsidiary or subsidiary of a mid-company or jointly owned with third parties as a joint venture. The group structure would also enable flexibility if the Council was approached by a prospective purchaser interested in the purchase of the group or part of the group.
- 2.8. The advantages of the Separate Groups Model can be summarised as follows:
- It continues the current direct governance link between the Council as shareholder and different operational businesses/groups;
 - It allows for group structures for the different businesses which enables more effective management of risk;
 - It allows for profits from trading to be received in the hands of a company that provides flexibility for whether funds are returned to the Council or reinvested with the potential for returns as dividends to be received as income to the general fund within the Council.

3 ALTERNATIVE OPTIONS

DIRECT RELATIONSHIP MODEL

The Direct Relationship Model is where each company would be set up as a direct wholly owned subsidiary of the Council and would not have any of its own subsidiaries. A diagram of this model is attached as Appendix2. As each company is governed directly and separately by the Council, the Council would end up needing to directly manage multiple companies which could present the Council with more of an administrative task than other structures and may make it harder to establish different relationships in practice. With regards the Risk Objective as each company would be directly controlled by the Council it would make it harder for the Council to easily manage the group effectively and may hamper effective risk management. With regards the Finance Tax Objective, as with the Separate Groups Model, this model enables the Council to enjoy the same exemptions in corporation tax and the possibility of forming a group for VAT and SDLT purposes. The Direct Relationship Model also would mean as with the recommended model, that because of the direct ownership by the Council the companies could not form a group for corporation tax purposes, though would be able to carry forward tax losses with the same issue as to the length of time it would take to utilise those losses compared to other models. For Future Flexibility, individual companies and businesses can be added through incorporation and acquisition and as with the Separate Groups Model this could be held by the Council as a wholly owned subsidiary or jointly owned with third parties by way of a joint venture. The main disadvantage of this model relates to the issue with regards governance and the potential for a higher burden of administration for the Council and the difficulty in establishing different relationship with each of the companies.

SINGLE PARENT COMPANY MODEL

- 3.1. This model is similar to the Separate Groups Model, but the difference is that the Council would just have a single corporate relationship with the holding company which would then have separate direct relationships with the group companies. A diagram of this model is attached as Appendix 3. The holding company could be given the role of managing the group and would provide a single point of relationship with the Council. This could stream line governance from the Council's perspective. However, there is a risk of dilution of the direct relationship between the Council as shareholder and the operational entities, as the relationship would be an indirect via the holding company and its board. With regards the Risk Objective this is the same as for the Separate Groups Model. The Finance and tax implications relating to dividends and corporation tax and VAT and SDLT are the same as for the other models. However, this model could enable establishing a group for corporation tax purposes so that losses could be surrendered between group companies in the most tax efficient manner. Though this may seem attractive it is not anticipated that the benefit of having a corporation tax group will be material enough to outweigh the benefits of the Separate Group Model at this moment in time. As to the Future Flexibility option, the same comments made about the other models applies to this one.
- 3.2. A full report of the models discussed above is attached as Appendix 4.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Not applicable for the purposes of this report

5 TIMETABLE

- 5.1. On approval of the Cabinet to recommendations 1 and 2 above, the timetable will be governed by the Director of Corporate Services exercising the above delegation.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The creation of a holding company in line with the separate groups Model will allow flexibility on commercial opportunities for the CHAS group.
- 6.2. This will create a corporation tax group for CHAS group companies which could be beneficial if new CHAS ventures are not profitable initially.
- 6.3. The CHAS group holding company can pay dividends to the Council which will not be subject to tax.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The legal and statutory implications are contained in the main body of this report.
- 7.2. If the Separate Groups Model is adopted, the creation of additional group entities should be considered on a case by case basis in light of the particular circumstances at the time with there being clarity at the board level as to the overall framework for considering options and sensible triggers for new companies.

- 8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**
- 8.1. Not applicable for the purposes of this report
- 9 CRIME AND DISORDER IMPLICATIONS**
- 9.1. Not applicable for the purposes of this report
- 10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**
- 10.1. Save for the references to risk mentioned above there are no further implications in relation to this report.
- 11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**
- Appendix 1 – diagram of Separate Groups Model
 - Appendix 2 – diagram of Direct Relationship Model
 - Appendix 3 – diagram of Single Parent Model
 - Appendix 4 – Options report relating to CHAS 2013 Ltd
- 12 BACKGROUND PAPERS**
- 12.1. None

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