

Commercial Governance Framework

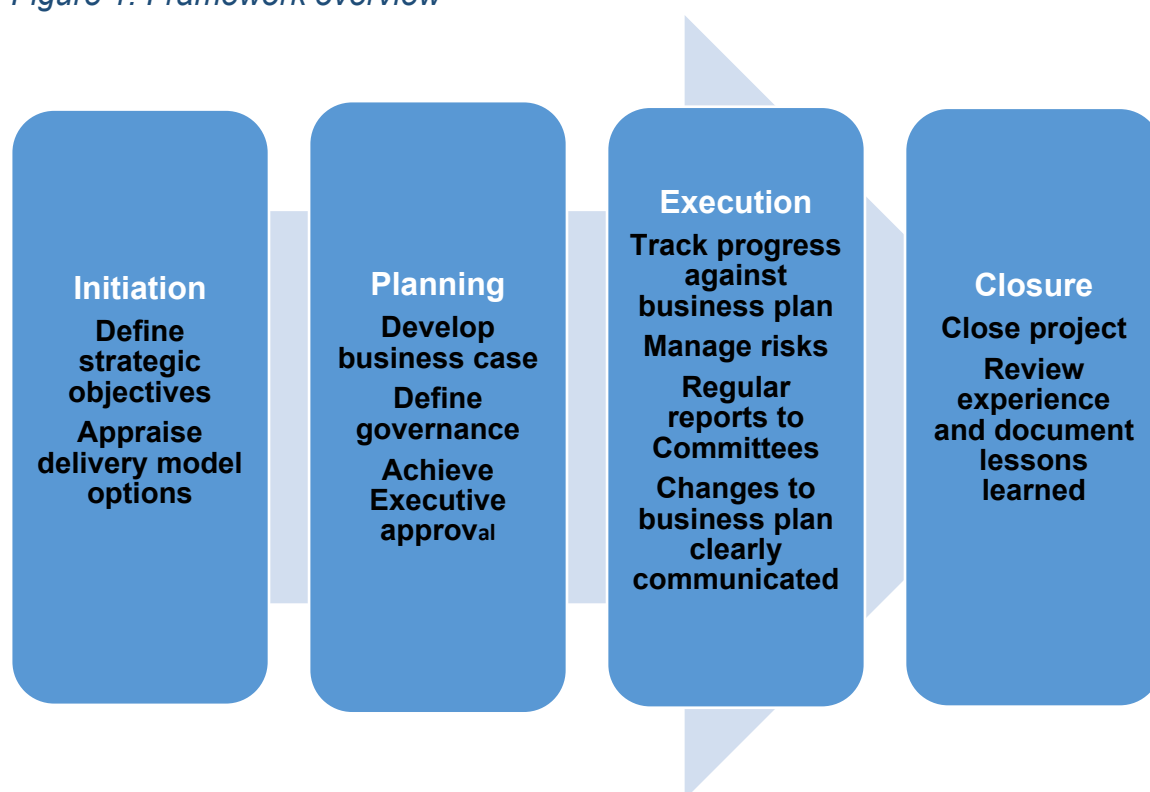
Background

1. This Framework is the distillation of lessons learnt from a review of commercial governance arrangements undertaken by a Member Task Group in 2018-19. The objective of this Framework is to set out a best practice template for the set up and delivery of commercial ventures and companies by the Council in future.

Approach

2. The Framework is structured to follow the lifecycle stages of a commercial venture, with elements applying to each stage – initiation: planning: execution: closure.
3. The Framework provides a structured approach against which individual proposals can be assessed on a “**comply or explain**” basis – ie each element must be followed, unless there is a sound and well explained justification for doing otherwise.

Figure 1: Framework overview



Scope

4. This Framework applies to any commercial venture (eg limited company or LLP in which the Council is a shareholder), or another internal or external structure whose impact on the Council is potentially similar to a commercial entity, where the Council’s actual cumulative exposure (by combination of nominal value of ordinary

or preference share capital, loan commitments, payments/remuneration to partners and other exposures) exceeds £100,000 (net of projected income).

5. For as long as the venture is of smaller scale than this threshold (which may be a result of the Council being a minority shareholder) or in a trial phase, discretion can be applied in how the Framework is applied.

Framework: Golden Rules

6. A number of key principles inform the Council's approach to the set up and delivery of commercial ventures. These principles (known as Golden Rules) should be applied before any such ventures are approved on a "comply or explain" basis. Explanations for any non-compliance should be recorded and scrutinised before the venture is approved.
 - (i) The shareholder function for all ventures will be exercised by a single, properly constituted Commercial Ventures Executive Sub-Committee. This may be supported by Member/Officer advisory group(s) where appropriate, for specific ventures, but the Sub-Committee will be the route for all formal reporting and decision making (except where items are taken directly to the Executive or to Full Council).
 - (ii) The structure chosen and related elements (eg shareholdings, employment contracts, other incentives, lines of accountability) must be considered as a whole by the Executive to ensure that there is alignment between incentives of the commercial venture /company and the Council's objectives.
 - (iii) The allocation of Council resources to a venture by the Executive will only occur on the basis of a report containing a completed version of the Initiation and Planning Checklist (Figure 2), with supporting documents as appropriate. Such resources will then only be transferred following execution of appropriate agreements (eg loan agreements).
 - (iv) The Sub-Committee will receive updates from ventures, based on the Execution and Closure Checklist (Figure 3) on a quarterly basis (the level of detail of such updates being proportionate to the scale of each venture). Reporting should capture reasons for decisions and the underlying supporting evidence relied upon.
 - (v) Internal financial reporting (ie to the Council's finance function) will be undertaken monthly, with reconciliation of cross charges and intragroup balances.
 - (vi) Any material changes to the business plan for any venture will be reported to and agreed by the Executive Sub-Committee.

- (vii) There will be strong controls over, and transparency relating to, potential conflicts of interest and related party transactions – covering officers, members, other shareholders, customers and suppliers. The highest risk applies to s151 Officer, Monitoring Officer, Head of Paid Service and Executive members and therefore there is a presumption against the appointment of any of these postholders to a Director role.
- (viii) Business plans will require the early appointment of a Non-Executive Director (or equivalent independent member).
- (ix) Appointment to all roles will be skills led, informed by a documented skills audit.
- (x) The Local Authorities (Companies) Order 1995 sets out the rights for an authority and individual member to receive company specific information. In applying the reasonableness test the Council will apply a presumption in favour of sharing relevant information with individual members. The presumption (to be confirmed as part of the initial business case/approval) should be that companies should file full accounts to the Council and publicly (on a voluntary basis if other criteria require a lesser form of reporting).

Commercial Governance Checklist

- 7. A practical checklist is set out below, which is based on the suite of Key Lines of Enquiry (KLOE) which were used in the Task Group's review of past commercial ventures, and is therefore grounded in the Council's practical experience. For each line of enquiry it records evidence of compliance (or the rationale for non-compliance).
- 8. The Checklist has two parts, covering different stages of the lifecycle and therefore to be used at different stages and, most likely, to different governance bodies:
 - **Initiation and Planning:** to be presented to the Executive when a request is made to approve the venture, and hence provides a reference point against which the operation of the venture can be measured.
 - **Execution and Closure:** to be presented to the Executive Sub-Committee on a regular (at least annual) basis, to enable it to discharge its role in monitoring delivery of the venture against the business plan.

Figure 2: Checklist - Initiation and Planning

Requirement	Evidence of compliance (or explanation for non-compliance)
Initiation	
a. How does the project fit with the Council's vision?	
b. What are the objectives of the venture?	
c. What is the Council's appetite for each of the risks involved with the venture? Do we understand the risks?	
d. What are the pros and cons of potential delivery vehicles? Why do we need a corporate entity (if that is what is recommended)?	
e. Why is this the preferred delivery vehicle?	
f. What is the structure of the proposed corporate entity? i. Structure (limited company, LLP, other). ii. Other shareholders/partners involved. iii. Capital structure (equity, debt, other).	
g. Is there sufficient Member buy-in?	
h. Is there sufficient officer buy-in?	
i. Is the Council's role in commercial decision making clear?	
Planning	
a. Does the assessment cover relevant criteria including costs, complexity, risks, return on investment?	
b. Is there a robust business case (to a comparable standard to that which an external investor would require)? Does the business case adequately cover?: i. Projected income and expenditure, over a reasonable time horizon. ii. A clear view of the amount of financing required from the Council, and other parties, over the same time horizon. iii. A range of scenarios covering both optimistic and pessimistic outcomes, showing the financial impact on the Council in each. iv. Success/outcome measures, translated into KPIs which	

Requirement	Evidence of compliance (or explanation for non-compliance)
<p>will be reported regularly to the Executive Sub-Committee.</p> <ul style="list-style-type: none"> v. Any other requirements on the Council, eg staff time, office space, or use of other Council assets. vi. Potential tax (corporation tax, VAT, other) and other liabilities arising. vii. How any unexpected losses would be absorbed. viii. Market and other research on which the financial forecasts are based. ix. Any Intellectual Property already possessed or expected to be developed as part of the venture, and clarity over its ownership. x. Resolution/shutdown plans/exit strategy in the event of a significant adverse event. 	
<p>c. What is the proposed governance model?</p> <ul style="list-style-type: none"> i. Role of Chairman of the Board (or equivalent). ii. Composition of the Board (or equivalent), including Non-Executive Director(s). iii. The proposed measures for training and evaluation of performance of the Board. iv. Arrangements for reporting back to the Council: <ul style="list-style-type: none"> i. To officers. ii. To the Commercial Ventures Executive Sub-Committee. iii. To the Overview & Scrutiny Committee. v. Potential constraints on sharing of information with the Council, and ways of addressing them (eg if there is to be a minority shareholder, ensuring that the Articles of Association and/or other documentation allow for full information flow to the Council). vi. Any other governance mechanisms proposed, eg advisory board, stakeholder committee. 	

Requirement	Evidence of compliance (or explanation for non-compliance)
<p>d. Who are the key people involved and how have we satisfied ourselves that their skills and experience are relevant and sufficient?</p> <ul style="list-style-type: none"> i. Identities, skills and experience of key personnel (covering people management, leadership, financial and commercial skillsets). ii. Results of due diligence on key personnel. iii. Assessment of potential conflicts of interest – including any current or expected involvement of related parties/companies. 	
<p>e. What controls will be in place to minimise/mitigate risk?</p> <ul style="list-style-type: none"> i. Procurement and fraud controls. ii. Financial controls (within the Council) to ensure funds advanced are in line with approved limits. iii. Financial controls (within the company/venture) including authorisation of expenditure. iv. Controls relating to other risks arising from the venture. 	

Figure 3: Checklist – Execution and Closure

Requirement	Evidence of compliance (or explanation for non-compliance)
Execution	
a. Is performance, resource and financial information being adequately tracked?	
b. Is the delivery of the project being tracked and monitored and early action being taken to address risks?	
c. What business management reporting processes are in place?	
d. What processes are in place to manage income/sales and to confirm compliance with the agreed business case?	
e. Is financial forecasting reviewed and managed to ensure adequate funding and cashflow available to confirm compliance with the business case? Is there a clear separation between the reports from the company/venture and	

Requirement	Evidence of compliance (or explanation for non-compliance)
the covering analysis by the Council's officers?	
f. What financial controls are in place to ensure expenditure complied with the agreed business case? Have the directors attested that these controls have been complied with during the previous reporting period?	
g. Are processes in place for agreeing changes to the business case (services delivered/sold/finances and resources required)?	
h. Is there assurance that no project creep is occurring? What change control processes are in place?	
i. Have all contracts entered into in (since the previous review) been checked for any conflicts of interest, and if any such conflicts arise, have these been resolved and/or made transparent?	
j. What corporate actions/filings have been reported to Companies House since the previous report?	
k. What are the results of the most recent evaluation of Board performance?	
Closure	
a. Was the agreed exit strategy (as set out in the Planning stage) followed? If not, why not?	
b. Has there been a review of the venture, appropriate to the scale of the venture and involving all relevant stakeholders?	
c. Are lessons learnt being captured and implemented?	

Review

- The Framework and its implementation shall be reviewed regularly and initially no later than 12 months after its adoption to ensure that it is meeting its objective and that lessons learnt drive improvement.