

Structure of the Local Government Association

Purpose

To seek the General Assembly's agreement to the incorporation of the Association and other measures to regularise its activities and protect the interests of member councils.

Summary

The LGA is currently constituted as an unincorporated association. As such it has no legal status and cannot enter into contracts or own title to property. Its two properties – Local Government House and Layden House - are currently held by two separate property companies.

This report sets out proposals to regularise the way in which the LGA is constituted in order to support the financial sustainability of the Association and protect the interest of member councils. The proposals sit alongside current work to refurbish the two properties to maximise rental income and increase their value so that the value of the Association's assets exceed its liabilities, in particular the pension deficits. The proposals will ensure that all income the LGA generates through its commercial activities, including property rental, is available in full to support the Association's objects and keep subscriptions as low as possible.

The proposals will require little change to the way the Association is run and have no direct impact on member councils.

Recommendations

The LGA Executive commends to General Assembly that subject to the outcome of discussions with HMRC, the General Assembly agrees that:

- 1 In the interests of its members, the LGA regularise its organisational structure as follows:
 - 1.1 A new incorporated LGA is set up as an unlimited company to take on the activities, assets and liabilities of the existing LGA, with the Chairman and Vice-Chairs of the Association as its Board of Directors.
 - 1.2 The existing unincorporated LGA remains in place until member councils have formally agreed to join as founding members of the new incorporated entity.
 - 1.3 LGA Properties Ltd (LGAP) and Local Government Management Board (LGMB) are converted to unlimited companies with share capital, with the shares issued to the new Incorporated LGA.
 - 1.4 The new Incorporated LGA forms a tax group with LGMB and LGAP and a VAT group with LGMB, LGAP and the IDeA.

- 2 The LGA enters into a legally enforceable guarantee agreement with IDeA to underwrite its pension deficit debts and takes steps to ensure that the value of the property assets sits between member councils and any liability for the pension deficits.
- 3 The Constitution is amended to enable the proposed changes to be effected.

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Background

1. In 1997, three former organisations – the Association of County Councils (ACC), Association of Metropolitan Authorities (AMA) and Association of District Councils (ADC) came together to form the Local Government Association (LGA) as the single voice of local government. In common with many membership organisations, the LGA was constituted as an unincorporated association – effectively a club for member councils – whose objects and powers are set out in its Constitution.
2. A separate property company - LGA (Properties) Ltd (LGAP) - was established with responsibility for the Local Government House, the LGA's Westminster headquarters.
3. Since 1997, the LGA has been through a number of changes, most notably combining in 2010 with the organisations that made up the former LGA family – the Improvement and Development Agency (IDeA), Local Government Employers (LGE), Local Authority Convenors of Regulatory Services (LACORS) and the Leadership Centre for Local Government, which has since become an independent charity.
4. The IDeA remains the specified body for the receipt of central government grant, so still exists as a company through which improvement activities are funded. Layden House, the IDeA's former headquarters in Farringdon is still owned by the Local Government Management Board (LGMB), whose current responsibilities are purely related to that property.

The issue

5. As an unincorporated association, the LGA has no legal status, cannot hold property, enter into contracts or be part of a tax or VAT group. This means that individual members or officers have to sign contracts and hold shares in trust for the LGA, that properties are held by two separate companies, and that special arrangements have to be set up when we want to partner with others.
6. The complexity of the arrangements also means that there is a risk of significant tax burdens which would not arise if the arrangements were regularised. As the organisation as a whole becomes more commercial, particularly in relation to its property related activities, the way in which tax and VAT is managed and accounted for becomes increasingly relevant and important.
7. As the funding position of local government has become increasingly challenging, the LGA has developed and entered into an increasing range of commercial interests to improve the financial sustainability of the organisation or to support member councils. The complexity of the Association's work and the drive to ensure financial sustainability and maximise the resources available to support and represent member councils are increasingly at odds with its unincorporated status.

8. The decision by the LGA Leadership Board in 2014 to invest in the refurbishment of Local Government and Layden House in order to maximise rental income into the Association and to increase their capital values has thrown the challenges of the current structure into sharp focus. Advice from Deloitte, confirmed by HMRC is that, as they stand now, LGMB and LGA (Properties) Ltd can no longer be seen as exempt from tax in the same way as the LGA because of the shift to more commercial activities. If the property companies remain separate their profits would therefore be subject to corporation tax.
9. In 2016, the LGA Leadership Board established a Task and Finish Group to lead a major piece of work to review the way in which the LGA and associated companies are set up, their purposes and inter-relationships and the flows of income and expenditure to, from and between the different entities.
10. The work took place over a 9-month period and included expert input commissioned from leading tax specialists, whose brief was to develop optimum arrangements that:
 - 10.1. Reduce the burden of the pension fund deficits.
 - 10.2. Refurbish Layden House and Local Government House with a view to increasing the value of the assets and generating commercial rental income.
 - 10.3. Consider using the value of the assets to assist with the pension fund deficit.
 - 10.4. Reduce dependence on Government grant by seeking out alternative sources of income.
 - 10.5. Take a more commercial approach to activity.
 - 10.6. Ensure government funded activity is clearly identifiable and we can account for the use of the resources provided.
 - 10.7. Ensure government funded activity is clearly separated from the lobbying and representation functions of the LGA.

The Proposals

11. The Task and Finish Group considered a wide range of options to regularise the current complex arrangements, to enable the Association to continue to deliver its objects as set out in the Constitution and to protect the interests of its membership. The complexity of the current arrangements, combined with the nature of the LGA's business and the priority to maximise the revenue and capital benefits of the two properties precluded a number of possible options.
12. Following an interim report and presentation of the options to Leadership Board in April 2017, the Task and Finish Group presented its final report to the Leadership Board and the LGA Executive on 14 June 2017. The Leadership Board approved the recommendations and their decision was ratified by the LGA Executive, who resolved to commend to the General Assembly the following:
 - 12.1. To incorporate the LGA as an Unlimited Company, whose memorandum and articles replicate those set out in the current Constitution, and to run this in

- parallel with the existing Association for a year while member councils sign up to the new incorporated entity.
- 12.2. To convert the two property companies to unlimited companies with share capital which is then issued to the newly incorporated LGA.
 - 12.3. Formally to merge the property companies into an LGA Group and then transfer the properties to the LGA.
 - 12.4. To set up a tax group between LGA, LGMB and LGA (Properties) Ltd and a VAT group with the same parties but with the addition of the IDeA.
 - 12.5. That the LGA enters into a legally enforceable agreement with the IDeA to underwrite its pension deficit in the event of it crystallising if the company were to cease trading.
13. Under the proposed unlimited company, members of the LGA would have the same entitlement to a share of the assets of the Association and the same responsibility for its liabilities in the event of the formal liquidation as set out in section 21 of the LGA Constitution.
 14. The refurbishment of Layden House and Local Government House will mean that their combined values will exceed the pension deficit liabilities once work is complete creating a net asset position. This will mean that the value of these two assets will sit between the pension deficit and member councils of the LGA. The graph at **Appendix A** illustrates the projected values of the Association's property assets and pension deficits going forward and shows that assets are expected to exceed liabilities from 2018/19.

The Benefits

15. The proposed new structures would be beneficial to every member council of the LGA, as more tax efficient income arrangements would enable the Association to maximise income from its assets, to offset its pension deficits against the two properties and keep subscriptions down.
16. Specific benefits of the proposals are:
 - 16.1. An incorporated LGA would have a legal persona and would be able to enter into contracts and own properties and shares.
 - 16.2. The transfer of the properties within a company group would be exempt from capital gains tax.
 - 16.3. The transfer of the properties to the LGA would mean that the income they generate would be for the purposes of meeting the objects of the LGA which, as a local authority association, would be exempt from tax on income and capital gains.
 - 16.4. Under the new arrangements, the value of the LGA's assets would sit between the member councils and the pension deficits with a net asset position once the refurbishments are complete.

- 16.5. The proposed structure would enable the establishment of a VAT group and remove the need to charge VAT on transactions between the LGA and IDeA or any other companies in the group.
- 16.6. An incorporated entity offers greater protection to individual members of the Leadership Board and Executive against any personal liability.

Timetable

17. All member councils will be required formally to sign up to join the new incorporated entity. To allow time for this to go through individual council processes, the current unincorporated Association will continue to run until General Assembly 2018. At that stage, subject to all member councils having joined the incorporated body, General Assembly will be invited formally to dissolve the unincorporated LGA. In the meantime, there will be no change to the current arrangements for 2017/18.

Conclusion

18. The LGA's political leadership has given detailed consideration to the current structural arrangements in order to protect the long term future of the Association and deliver greatest benefit to its membership. The LGA Leadership Board and Executive commend to the General Assembly the recommendations set out at the front of this report.