

REPORT REFERENCE NO.	DSFRA/17/23
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	26 JULY 2017
SUBJECT OF REPORT	COMPANY TRADING MODELS – FURTHER DEVELOPMENTS
LEAD OFFICER	Director of Corporate Services
RECOMMENDATIONS	<p>(a) That, given further legal advice recently obtained, the decision of Board of Directors of Red One Ltd. not to pursue establishment and operation of a community interest company be noted;</p> <p>(b) That, in noting the decision at (a) above, the Authority, for the purposes of certainty and clarity resolves:</p> <ul style="list-style-type: none"> i. to pass (as sole shareholder in Red One Ltd.) a special resolution in accordance with Article 4 of the Company’s Articles of Association directing the Company not to transfer any Red One Ltd. contracts, liabilities, assets or resources (including staff) from the Company to any new company; and ii. to authorise the Clerk to the Authority to formally notify the Company in writing of this special resolution. <p>(c) That, subject to (a) and (b) above, the report be noted.</p>
EXECUTIVE SUMMARY	This report advises the Authority on the current position in relation to commercial trading by the Authority including the mechanism for delivering such activities.
RESOURCE IMPLICATIONS	Nil.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing equalities and human rights legislation.
APPENDICES	Nil.
LIST OF BACKGROUND PAPERS	Report DSFRA/20 (Establishment of a Community Interest Company – Progress Report) to the Authority Ordinary Meeting held on 12 June 2017.

1. INTRODUCTION

- 1.1. On 4 April 2017 an Authority Extraordinary Meeting together with an Extraordinary General Meeting of Red One Ltd. (“the Company”), attended by the Authority in its capacity as sole shareholder in the Company were held.
- 1.2. The purpose of these meetings was to consider a range of issues relating to the operation of the Company.
- 1.3. Arising from these discussions, the Authority (as sole shareholder) passed resolutions at the Extraordinary General Meeting of the Company:
 - to establish a community interest company limited by guarantee; and
 - that, once the community interest company had been established:
 - all current contracts, liabilities, assets and resources (including staff) of the current Red One Ltd. be transferred to the new company; and
 - that, upon completion of the above transfer, the Board of Red One Ltd. be granted permission at the appropriate time to formally wind up the former Red One Ltd.
- 1.4. At its Ordinary Meeting on 12 June 2017, the Authority received an update report (DSFRA/17/20) which identified, amongst other things:
 - that the Board of Directors of Red One Ltd. had established and incorporated a community interest company (CIC) limited by guarantee – Red 1 Devon & Somerset Community Interest Company (the Certificate of Incorporation for the company, including its Articles and Community Interest Statement, were attached to the report);
 - that, on the basis of the Articles for the CIC as currently drafted, the “members” (equivalent to the shareholder in a company for profit) were Mark Healey, David Thomas and Mr. John Woodman in a personal capacity (i.e. not as Members of this Authority);
 - that the intention behind establishing the CIC in this way was to afford greater flexibilities in trading;
 - that the CIC was at present only a “shell” company and was not trading or operating actively.
- 1.5. Report DSFRA/17/20 also identified that work was ongoing with a view to revising the Articles of the CIC to provide, amongst other things for the Authority to appoint “members” on the CIC (or become a “member” in its own right).

2. CURRENT POSITION

- 2.1 As part of the ongoing work on establishing the new CIC, further legal and tax advice has clarified that the new CIC as currently established does not, as previously believed, provide greater freedom to trade or a more tax efficient trading model.
- 2.2 Specifically, by virtue of Section 95(4) of the Local Government Act 2003 and Part V of the Local Government and Housing Act 1989 (“the 1989 Act”), local authorities (including combined fire and rescue authorities such as the Devon & Somerset Fire & Rescue Authority) may only exercise trading functions through a company in which the Authority has an interest, including companies subject to the influence of the local authority in question.

- 2.3 The new CIC is caught by virtue of Section 69 of the 1989 Act, which provides that a company is “subject to the influence” of a local authority where there is a “business relationship” between the local authority and the company and where:
- at least 20% of the voting rights of all members having the right to vote at general meeting of the company are held by “persons associated with the company”; or
 - at least 20% of the directors of the company are “persons associated with the company”; or
 - at least 20% of the total voting rights at a directors meeting of the company are held by “persons associated with the company”
- 2.4 “Persons associated with the company” is defined as either:
- a Member of the local authority concerned; or
 - an officer of the local authority concerned; or
 - an employee of the local authority who is also a director, manager, secretary or other similar officer of the company concerned; or
 - an individual who was, within the preceding four years, a Member of the local authority concerned.
- 2.5 Additionally, the legal and tax advice has also confirmed that:
- by virtue of The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 and Section 5A of the Fire and Rescue Services Act 2004, inserted by the Localism Act 2011, companies which are either controlled by or under the influence of local authorities are subject to all applicable statutory restrictions applying to local authority trading. In the case of a combined fire and rescue authority, this restricts trading to activities connected to any of its functions;
 - Community Interest Companies are liable to corporation tax in the same way (and at the same rate) as private limited companies. Corporation tax is chargeable on any trading profits and on any investment income or gains. A CIC is eligible for the normal corporation reliefs but there are no CIC specific exemptions or reliefs available. As such, the corporation tax position should be the same for the new CIC as it is currently for Red One Ltd.
- 2.6 This position has been discussed with the Board of Directors of Red One Ltd. which has agreed that, in light of above and there being no significant advantages to doing so, it will not be seeking to progress establishment and operation of the community interest company. The Authority is invited to note this position and in so doing, for the purposes of certainty and clarity:
- to pass (as sole shareholder in Red One Ltd.) a special resolution in accordance with Article 4 of the Company’s Articles of Association directing the Company not to transfer any Red One Ltd. contracts, liabilities, assets or resources (including staff) from the Company to any new company; and
 - to authorise the Clerk to the Authority to formally notify the Company in writing of this special resolution.

3. MOVING FORWARDS

- 3.1. When Red One was first established, the operating principle that shaped the early days of the Company was to sell to others any spare training capacity that the Service had as this improved cost effectiveness (Red One paid the Service for use of this capacity). However, as a result of reductions in operating budget as well as the establishment of a new training delivery model (which is less centralised and more localised), any spare training capacity within the Service has either been removed as part of the savings strategy or used to deliver the localised training delivery model, which is designed to improve firefighter safety.
- 3.2. Whilst these changes have resulted in a reduction in the availability of Service training staff to support Red One, the move to a more localised training delivery model will continue to free up central training venue capacity (e.g. buildings, vehicles and equipment) that is available for Red One to use. As such, and following discussions between the Service and Red One Ltd, Red One will continue to make a contribution to the Service for its use of physical assets and it will, at the same time, increase the number of staff it directly employs to deliver training in order that the Company becomes self-sufficient in terms of the services it provides to its customers.
- 3.3. Consequently, in light of actual trading experience over the past few years, it is also felt that it would now be timely to revisit the Trading Company Contract between the Authority and Red One Ltd. to ensure that – as far as is practicable – it reflects appropriately the requirements associated with commercial trading in areas such as use of Service resources, including staff etc.
- 3.4. Additionally, in light of experience to date and the governance/legal review work recently undertaken, it has been identified that there would be merit in reviewing the Articles of Red One Ltd. to ensure that they appropriately reflect the requirements of the Authority, e.g. in areas such as appointment and removal of directors, directors remuneration, appointment of chairman of the board of directors etc.
- 3.5. It is intended to take these matters forward and to submit a report on progress report, with recommendations as necessary, to the next meeting of the Authority.

MIKE PEARSON
Director of Corporate Services
(Clerk to the Authority)