

Meeting date:	24 March 2020				
Agenda Item:	7				
Item Subject:	Implications of becoming a legal entity				
For:	Discussion	X	Decision	X	Information
<p>Purpose: To outline a) The key actions resulting from the advice note from the solicitors on the implications of becoming a legal entity b) Implications of the advice provided by solicitors on Corporation Tax and VAT</p>					
<p>Recommendations:</p> <ol style="list-style-type: none"> To approve the actions outlined in section 1 below and agree that a new Service level Agreement between the LEP and Shropshire Council be drafted for the Board to consider at its next meeting if Herefordshire Council and Telford and Wrekin Council confirm they are both content for Shropshire Council to continue as the accountable body for the LEP. The results of a best value exercise on the costs of services provided by the accountable body be produced for the next LEP Board meeting. To note Item 8b. Under this item the Performance, Risk and Monitoring Committee of the LEP are proposing that the LEP use a small % of Growth Deal funds to cover the cost of managing the Growth Deal Programme. This in turn would help increase the LEP income and off-set some of the additional costs the LEP is incurring on VAT and Corporation Tax. 					
<p>1. Actions resulting from Legal Advice provided by solicitors, Pinsent Masons</p> <p>The LEP commissioned Pinsent Masons to provide formal advice on the implications of the LEP having been incorporated as a Company Ltd by Guarantee (CLG) on 12 February 2019. A draft Advice Note was considered at the November 2019 LEP Board meeting. The attached document at Appendix 1 was finalised in late January 2020 and both the Director of Finance, Governance and Assurance (Section 151 Officer) for the LEP and the Legal Services Manager for Shropshire Council have now reviewed the document and provided the following feedback.</p> <p>A new Service Level Agreement (SLA) should be drawn up between the LEP and its accountable body which sets out:-</p> <ol style="list-style-type: none"> the role of the Director of Finance, Governance and Assurance (Section 151 Officer) when acting on behalf of the LEP; the process for when and how the LEP authorises Shropshire Council to enter into funding agreements on its behalf. N.B. A process will also need to be set out in the SLA of instances when the LEP authorises the Council as the Accountable Body to enter into a funding agreement with Shropshire Council; how the Government's grants awarded to the LEP (which the Accountable Body receives on behalf of the LEP) will be managed by the Accountable Body; a dispute resolution process if the Director of Finance (Section 151 Officer) for the LEP does not agree with a decision taken by the LEP Board; the agreement that the LEP will keep a reserve to cover redundancy and a pension deficit contribution for the staff the Council has employed on behalf of the LEP and that the Council shall put in place secondment agreements for these LEP staff; the services that Shropshire Council has agreed to provide to support the LEP i.e. HR, payroll, pension, IT, finance and accounting and legal services and how much the LEP will pay for these services. 					

N.B. The LEP secretariat will undertake a benchmarking exercise on the charges levied by Shropshire Council for the services provided for HR, payroll, IT, finance and accounting and legal services to ensure best value is being achieved.

It has also been noted that as a consequence of this legal advice the standard LEP grant funding agreement needs to be updated to reflect that the LEP is a Company Ltd by Guarantee and that the LEP will need to indemnify Shropshire Council for any legal action the LEP wishes to pursue.

2. Accountable Body status

The LEP Chief Executive is currently seeking the views of the CEOs at Telford and Wrekin Council and Herefordshire Council on whether they are content for Shropshire Council to continue to act as the Accountable Body for the LEP. If they are, the new SLA will be drawn up between the LEP CLG and Shropshire Council acting as the accountable body. If they are not, a tender for the work will be issued to all three local authorities.

3. Corporation Tax and VAT

Attached at Appendix 2 is the content of an email received from Pinsent Masons on 23 February 2020 on the corporation tax and VAT position of the LEP since operating as a separate legal entity from April 2019. The legal advice attached states that the LEP will have to pay VAT and cannot recover it and confirms the LEP will be liable for corporation tax on the interest earned from reserves and grants advanced to the LEP by government at the start of each financial year. From 1 April 2019 it is estimated that the LEP will incur the following additional costs annually.

- VAT at 20% for LEP and Growth Hub services - circa £100k/annum
- Corporation Tax at 19% on interest earned on reserves circa £30k/annum
- Preparation of external accounts and external audit - circa £30k/annum

N.B. the LEP has put aside reserves already to pay the VAT and tax liabilities for FY 2019/20 and 2020/21 in FY 2020/21.

The LEP Network is holding a virtual meeting on the morning of 24 March, which approx. 15 LEPs are joining. The purpose of the meeting is to consider the implications of the additional VAT and tax costs LEPs are now incurring as a result of incorporation and whether the government should consider meeting these additional costs. The LEP CEO will be joining this meeting and will provide a verbal report at the Board meeting.

The LEP Performance, Risk and Monitoring Committee (PRMC) are concerned that this level of additional costs will mean the LEP reserves will be eroded especially as there are no clear plans or opportunities to increase the LEP annual income to compensate for this additional cost. The PRMC is proposing that the management costs being incurred by the LEP team to manage the Growth Deal programme each year be deducted from Growth Deal funds. This is something a number of other LEPs are already doing. The Director of Finance, Assurance and Governance (Section 151 Officer) is considering whether this is allowable under Government accounting rules. See the paper at Item 8b on the LEP Board Agenda.

Financial implications:

As a consequence of the LEP now being liable for Corporation tax on interest earned and VAT the additional annual costs are estimated at being between £150 and £170k /annum which will reduce the level of reserves to the LEP each year. This means that within 2020/21 FY the LEP will need to identify another income stream or seek further contributions from stakeholders to be able to fund the LEP secretariat and meet all of its liabilities.

Legal implications:

To see attached advice at Appendices 1 and 2

Risks, opportunities and impacts:

The additional VAT and tax costs will mean that the LEP will have to look at creating new revenue streams.

Appendices:

Appendix 1 – Advice note from Pinsent Masons on incorporation as a Company Ltd by Guarantee

Appendix 2 – Advice from Pinsent Masons on VAT and Tax implications