

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2303

Title: Acquisition of London Treasury Limited and related matters

Executive Summary:

MDs 1634 and 2156 previously approved that the GLA contract directly with a Financial Services Market Act 2000 authorised firm to provide certain services relating to the Group Investment Syndicate and the treasury management services to be provided by the GLA to London Boroughs. This MD seeks authority to finalise these arrangements, including the acquisition of London Treasury Limited.

Decision:

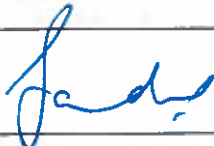
The Mayor approves:

- the acquisition by the GLA (as sole member through Greater London Authority Holdings Limited) of London Treasury Limited (LTL) for the purpose of LTL being a Financial Services Market Act 2000 authorised firm providing certain services relating to the Group Investment Syndicate (GIS) and treasury management services to be provided by the GLA to London Boroughs;
- the proposed structure and controls over LTL on acquisition as set out in the supporting report to this decision, including that LTL will be an Arm's-Length company (rather than a GLA-Managed Company) for the purposes of 'Mayoral Decision Making in the GLA' (as revised in due course);
- the proposed matters at Appendix 1 for reservation for Mayoral or GLA approval in amended LTL Articles of Association and authorises the Executive Director of Resources to agree any further non-material changes to the text necessary to finalise updated Articles of Association, including inserting a maximum number of Directors, subject to the approval of the existing LTL Board of Directors;
- the Executive Director of Resources to finalise any necessary arrangements for the LTL acquisition and for London Boroughs to be able to join the GIS, including entry into a share purchase agreement for LTL and revising the Investment Management Agreement with LTL and approving the secondment of existing staff to LTL;
- the appointment of the Executive Director of Resources (or such substitute as he may nominate) to represent the Mayor and to exercise any functions of the GLA in its capacity as the sole member of LTL in its general meetings or otherwise under company law ("GLA's Member Representative") outside of those matters being reserved specifically for the Mayor in amended Articles of Association of LTL; and
- the continued appointment of the persons listed in Appendix 2 as Directors of LTL subject to them agreeing the terms and conditions of appointment (to be sent separately).

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority. The above request has my approval.

Signature:



Date:

27/5/18

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 MD 1634 approved the GLA entering arrangements with certain London Boroughs to discharge treasury management services. MD 2156 approved the arrangement that a Financial Services and Markets Act (FSMA) 2000 authorised firm contracted by the GLA would on a short-term basis provide certain services relating to those treasury management services, including to the Group Investment Syndicate (GIS), GLA and London Boroughs, whilst the GLA considered a longer-term plan in respect of the provision of investment services
- 1.2 The decision granted under MD 2156 was required as London Boroughs are only able to participate in the GIS and/or receive wider treasury management investment services from a third party by using their delegation powers under Regulation 9 of the Local Authorities (Contracting out of Investment Functions) Order 1996. This order enables the delegation of their investment functions, but such delegation can only be to an FSMA authorised entity.
- 1.3 This MD proposes that the GLA, having now considered its longer-term plans in respect of the provision of investment services, acquires (as sole member) through Greater London Authority Holdings Limited, London Treasury Limited (LTL), a private company limited by shares and currently wholly owned by the GLA's Chief Investment Officer, who is an LTL Director alongside one other Director. Details are set out in the Part 2 report. A list of the current Directors is attached at Appendix 2.
- 1.4 LTL was incorporated in October 2017 and is currently FSMA authorised through being an 'Appointed Representative' of Disruptive Capital Finance LLP (DCF). The GLA has a signed an Investment Management Agreement (IMA) with LTL for it to provide investment services. LTL has applied for its own independent FSMA authorisation and this is expected to be received by the middle of July at which point LTL will operate independently with no FSMA authorisation or ownership link to other firms.
- 1.5 External legal due diligence on the acquisition of LTL is being conducted by Eversheds. The draft due diligence report has not raised any material issues that affect the recommendations set out in this decision, but has flagged a number of minor issues which are now in the process of being addressed by LTL. This is not surprising as LTL has, as yet, not undertaken any investment transactions because it was established for use in GLA transactions.
- 1.6 As described further in section 4, the GLA proposes to control LTL through shareholding, approval of Directors, an Investment Management Agreement (IMA) to be revised from time to time and changes to the LTL articles of association reserving certain matters to the GLA / Mayoral approval. The GLA through Greater London Authority Holdings Limited is to be the sole shareholder, owning and controlling all LTL's shares. The GLA's Chief Investment Officer is proposed to remain a director of LTL and another Director will be an independent non-executive appointed by the GLA subject to approval by the Financial Conduct Authority (FCA). The GLA will be able to approve any proposed new Directors and have the right to remove any Director. LTL's day to day operations are controlled by the GLA through an IMA. The IMA sets out what LTL can and cannot do and can be revised as required to reflect changing circumstances. LTL's Articles of Association (AoA) will be revised to ensure that any decisions that might pose a risk to the GLA are reserved for the GLA.
- 1.7 It is proposed that existing Treasury operations staff, when they are undertaking investment functions on behalf of GIS members, including London Boroughs, are seconded to LTL. These secondments apply to a few of the staff for limited parts of each day when they are undertaking daily dealing operations. Further advice is being sought on whether those GLA staff undertaking Controlled Functions (as determined from time to time by the FCA) may be concurrently employees of GLA and LTL. These arrangements are not expected to change the underlying terms and conditions of service of the staff affected.

- 1.8 Arising from the independent review of the treasury function and the approved mini re-structure of the finance function, an external provider has commenced its compliance role. The Chief Investment Officer will be launching a prospectus for London Boroughs to potentially join the GIS in the summer, with the target of two Boroughs joining the GIS arrangements by the end of 2018-19.
- 1.9 The Executive Director of Resources is authorised to finalise any necessary arrangements for London Boroughs to be able to join the GIS as set out above.

2. Objectives and expected outcomes

- 2.1 The acquisition of LTL will facilitate the expansion of the GIS through it being able to undertake investments on behalf of new London Borough members (through LTL) and also enable the GLA to provide wider treasury management investment services to the London Boroughs (again through LTL). Set out below are the advantages arising from this:
 - Increased savings in fees would eventually arise for existing GIS members;
 - Increased opportunities for complementary investments and borrowings by GIS members;
 - New services to GIS members, particularly the growth of a GIS II which would offer a medium-term investment vehicle of funds not anticipated to be required for at least a year;
 - Pan-London GLA regeneration initiatives with Boroughs could be more readily promoted;
 - Greater resilience in the treasury team would be secured; and
 - Increased assurance as a result of investment and advice functions operating under FCA supervision.

3. Equality comments

- 3.1 Under Section 149 of the Equality Act 2010, as a public authority, the Mayor of London must have 'due regard' of the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not.
- 3.2 There are no direct equality implications arising from this Decision. The acquisition of LTL and its enabling of the expansion of the GIS would assist the delivery of pan-London GLA regeneration initiatives, which in turn would help promote the Mayor's policies on Equality, Diversity, Inclusion, Social Mobility and Social Integration.

4. Other considerations

LTL's governance relationship with the GLA

- 4.1 Currently there are two classes of GLA subsidiary company: (i) GLA-Managed Companies (GLA Holdings and GLAP); and GLA Arm's-Length Companies (SMEWFL only).
- **GLA-Managed Companies** are those whose decision making is fully integrated with that of the GLA and which exist to implement day¹ to day GLA decisions, using a GLA Decision form, save in respect of certain decisions for company law purposes. Such companies have no staff of their own as the GLA's own staff undertake the various actions required. Their Directors are solely GLA employees. In this way a Managed Company is simply a shell that operates as the alter ego of the GLA, which takes all the decisions that are implemented in the company's name by GLA staff. GLA Holdings Limited and GLAP are examples.
 - **GLA Arm's-Length Companies** are those for whom interaction with day to day GLA decision making is minimal and restricted to specific areas, namely those in relation to which the company is required to obtain prior GLA approval (e.g. any proposed change to its AoA, the appointment of any Directors, annual business plan and budget, change of business etc.). The company's business does not require a GLA Decision Form. They operate within the terms of their own memorandum and AoA and under the supervision of the company's board and internal decision-making structure. SMEWFL is an example.
- 4.2 LTL will not fall within the GLA classification of a GLA- Managed Company but would be an Arm's-Length company, albeit with greater GLA oversight than SMEWFL through restrictions under the IMA. LTL requires more autonomy to enable it to undertake its day to day operations. Therefore, LTL will operate as an arm's-length company to the GLA, for example, it will secure its own company secretarial and legal support and have its own policies in place.
- 4.3 The controls to be operated by the GLA over LTL will be through sole shareholding, approval of Directors, an updated bilateral Investment Management Agreement (IMA) and changes to the LTL AoA reserving certain matters to GLA/Mayoral approval.

GLA control through shareholding

- 4.4 The GLA through its subsidiary GLA Holdings Limited will become the sole shareholder, owning and controlling all the company's shares.

GLA control through approval of Directors

- 4.5 It is proposed that the GLA's Chief Investment Officer remains a Director of LTL (and also remains the managing director and a GLA employee) and another Director of LTL will be an independent FSMA authorised non-executive appointed by the GLA. Any Director of LTL will need to be FSMA authorised and GLA will consider how best to implement this (including by reference in the updated IMA and potentially an additional amendment to the AoA). The GLA (through matters reserved to the GLA) will be required to approve any proposed new Director before appointment and will also have a right to remove any Director (e.g. because the Director no longer has FSMA authorisation, is investigated by the FSMA or does something to bring the GLA into disrepute).
- 4.6 It is proposed that the number of Directors for LTL is kept to a minimum, with a maximum of three Directors and a minimum of one being the proposal. The LTL AoA currently provide that the

¹ Section 13 of Mayoral Decision Making in the GLA (MDM) specifically gives the company an Implementing Action Authorisation. This says: "Every GLA Subsidiary Company, and each GLA Company Director, is authorised to take any action through the Company (an 'Implementing Action') to implement an approved GLA Decision, subject to any contrary requirement under company law. Such action includes doing anything incidental or conducive to, or which facilitates, the implementation of that decision."

default quorum for Directors' meetings is two, unless there is a sole Director in office. There is currently no maximum number of Directors and amendments will therefore be required to the AoA to insert a maximum number of three Directors, requiring prior GLA consent to any change in the persons actually appointed as Directors.

GLA control through matters reserved in the Articles of Association

- 4.7 LTL's AoA govern the scope of its activities and it is proposed that amendments are made to the AoA to ensure any decisions that might pose risk to the GLA are reserved for the GLA as shareholder. The draft matters to be reserved for Mayoral approval (for which approval should be given directly by the Mayor, normally through a Mayoral Decision Form) and GLA approval (by members of GLA staff under (as appropriate) either the General Delegation (by those listed in Appendix 3 of the MDM) or other staff under the General Staff Authorisation (set out in Part C of MDM) are attached at Appendix 1. The practical effect is that outside of those matters requiring Mayoral or GLA consent, LTL has the autonomy to operate effectively and pursue its objects, recognising the very different nature of its business to that of the GLA.

Control through an Investment Management Agreement

- 4.8 LTL's day to day operations will be controlled by the GLA through an updated Investment Management Agreement (Updated IMA) entered into between the GLA and LTL on or around acquisition. The Updated IMA will need to ensure that LTL are required to work within the parameters of the member approved GIS Investment Strategy (the existing IMA does already provide for this). The Updated IMA will also set out all what LTL can and cannot do on the GLA's behalf, and what the GLA will fund via a schedule of fees. It is proposed that LTL does not have any other income and (as with the existing IMA) will provide that LTL cannot act for any other person without GLA written permission.

Risks

- 4.9 The principal perceived risks of the LTL acquisition and expansion of the GIS and treasury management investment services and how these can be mitigated are set out below:
- There may be a perception that existing GIS members may be subsidising London Boroughs treasury activities. However, the liabilities and benefits of the GIS are ring-fenced to each GIS member (i.e. there is no cross subsidisation of returns or costs);
 - There is a danger that the London Boroughs might not fully accept the existing agreed GIS Investment Strategy and this might paralyse decision-making or lead to the need for special and more costly arrangements. This risk will be mitigated by ensuring that the London Boroughs wishing to join are aligned to the existing strategy;
 - Being a wholly owned GLA company, LTL would be consolidated within the GLA's Group Accounts. This would mean any debt, either existing or new would be included on the GLA's balance sheet and the GLA will need to assess any financial risk if and when they arise. Consolidation would also create an additional administrative burden for GLA Finance, whose staffing complement is currently being strengthened in the light of this and other pressures;
 - It is proposed that LTL does not provide services to any person other than to the GLA without the prior consent of the GLA. There is a risk that LTL may approach the GLA with a request for grant funding to support staffing or operational costs to smoothen its cash flow. In addition, if LTL was to dissolve, it would be very difficult reputationally for the GLA not to pick up liability for any costs or debts incurred given LTL would be wholly owned by the GLA. This risk will be closely managed by the operation of the IMA and is not expected to materialise;

- LTL's reputational risk will be intertwined with the GLA's on acquisition. As the sole shareholder GLA may still have legal, and will have reputational, liability. If LTL was to fail or make a controversial investment decision, the GLA and the Mayor of London could find itself exposed financially and reputationally. The GLA will be kept outside of the LTL Directorship structure (other than through the Chief Investment Officer as an existing GLA employee) to reduce perceived reputational liability of the GLA for LTL and to reduce the conflict of interest that would arise from the most senior staff being Directors as well as those overseeing the LTL performance management relationship (through the IMA). This risk will also be mitigated through investment decisions being made through the GLA's existing decision-making processes; and
- A lack of clarity on GLA and Mayoral consents required by LTL and the interaction of LTL with the GLA's decision-making framework would expose the GLA to significant risks; the impact of which would be limited control over the activities of LTL and a failure to properly consider and authorise proposals. The arrangements the Mayor is being asked to approve through this document (by way of sole shareholding, proposed amendments to LTL's AoA, approval of Directors and an updated Investment Management Agreement as described in section 4) will address this risk. It should be noted, however, that this is a novel arrangement for the GLA and although input has been provided from legal, governance and finance officers, there is some residual risk as a result which will be managed through the oversight provided by the Executive Director of Resources, other GIS members and those officers providing professional advice and support to this function.

5. Financial comments

5.1 See Part 2.

6. Legal comments

- 6.1 The GLA's principal purposes, under section 30 of the Greater London Authority Act 1999 (GLA Act), are to promote economic development and wealth creation, promote social development, and the improvement of the environment, all in Greater London. The GLA has power to do anything which it considers will further any one or more of its principal purposes. The investment activities of LTL fall within these principal purposes.
- 6.2 Under section 34(1) the GLA may do anything it considers will facilitate or is conducive or incidental to the exercise of the section 30 principal purposes. Sections 30 and/or 34 provide the legal powers for the GLA to acquire an FSMA entity, become the sole company member of LTL on acquisition, and thereby for the company to become a wholly owned subsidiary of the GLA.
- 6.3 At the point that LTL becomes a wholly owned GLA subsidiary company it becomes subject to local government law and relevant local government accounting and other financial practices. A public body cannot generally delegate its statutory powers to a subsidiary. Therefore, a balance has to be struck between the GLA (the Mayor and delegated GLA staff) approving a framework consistent with his statutory powers, within which LTL will operate on a day to day basis. The Investment Management Agreement framework and other controls outlined in section 4 above strikes an appropriate balance and provide the GLA with the necessary degree of oversight and exercise of Mayoral powers but allows LTL sufficient autonomy to operate efficiently on a day to day basis.
- 6.4 As a wholly owned subsidiary LTL will be a regulated company under the Local Authorities (Companies) Order 1995 (as amended) which imposes duties on the company including as regards the identification of it as a GLA subsidiary on its company documentation, the access of the GLA auditors to its accounts and also the right for GLA elected members to inspect its meeting agendas

and minutes. LTL will also be subject to legislative requirements applicable to other members of the GLA group including the Freedom of Information Act 2000.

- 6.5 The Mayor can authorise a GLA director under section 38 of the GLA Act to exercise the GLA's rights as a company member at company general and board meetings in order to acquire sole ownership and then exercise control of the company going forward.
- 6.6 As mentioned in paragraph 1.2 above, the acquisition of LTL is proposed to provide a solution to the issue that London Boroughs would only able to participate in the GIS and receive other treasury management investment services from the GLA group, by using their delegation powers under Regulation 9 of the Local Authorities (Contracting out of Investment Functions) Order 1996. This order enables the delegation of London Borough investment functions, but such delegation can only be to an FSMA authorised entity. The 1996 Order does not apply to the GLA, nor other existing members of the GIS (i.e. functional bodies: the London Fire Commissioner, the London Legacy Development Corporation and the Mayor's Office for Policing and Crime; and the London Pensions Fund Authority (LPFA)) and the GLA is not an FSMA authorised entity.
- 6.7 The GLA, the functional bodies and the LPFA all participate in the GIS (through which the GLA implements a member agreed Investment Strategy) and wider shared treasury management services with the GLA pursuant to: (i) their investment and borrowing powers under the Local Government Act 2003; and (ii) powers under s401A of the Greater London Authority Act 1999, under which they fall within the meaning of 'relevant London authorities' which can enter into arrangements for the provision of administrative, professional or technical services or the delegation of such functions between themselves, for consideration or otherwise. The London Boroughs have the same investment and borrowing powers under the Local Government Act 2003, but are not relevant London authorities for the purposes of s401A. The GLA, the relevant functional bodies, and LPFA have no powers to delegate their decision making to a company, whether FSMA authorised or not. The London Boroughs, in contrast, do have such powers. In addition, local authority subsidiary companies cannot do things outside the powers of the authority that owns it.

7. Planned delivery approach and next steps

- 7.1 The current estimated timeline is set out below.

Activity	Timeline
Complete establishment of new arrangements including the acquisition of LTL	June 2018
LTL's own independent FSMA authorisations received	Mid July 2018
Existing GIS members investments transactions moved to LTL	Late July 2018 onwards
Prospectus developed for London Boroughs to join the GIS	August 2018
Two London Boroughs to have joined the GIS arrangements	March 2019

- 7.2 Following Mayoral approval, LTL will need to undertake a number of steps to permit the GLA to be the sole member and owner of LTL. The proposed amendments to the AoA at Appendix 1 need to be approved by LTL, and the acquisition will need to be conducted through a simple share purchase agreement between the GLA as purchaser and the GLA's Chief Investment Officer as seller, followed by an update to LTL's register of members, to give effect to the GLA being the sole member of LTL.

Appendices and supporting papers:

Appendix 1: Draft matters for reservation in London Treasury Limited Articles of Association for Mayoral or GLA approval

Appendix 2: List of current Directors of London Treasury Limited

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? YES

If YES, for what reason:

This decision involves commercially confidential information

Until what date: March 2019.

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

David Gallie has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Martin Clarke has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

David Bellamy has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on the 29 May 2018.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. D. Gallie

Date

29.5.18

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

D. Bellamy

Date

29/5/2018.