

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD1598

Title: London & Partners Ventures Limited

Executive Summary:

London & Partners (L&P) is proposing to establish a new subsidiary company called "London and Partner Ventures Limited". The new company will hold the majority of L&P's commercial ventures, to assist in more clearly delineating L&P commercial activities from GLA funded activity and to mitigate any State aid risks which might arise from the potential conflation of commercial and non-commercial activity.

Under L&P's articles of association the written consent of the Mayor (acting as a member of L&P) is required for the establishment of new L&P subsidiary entities.

The establishment of the proposed subsidiary may impact upon the GLA's position as a key funder of L&P and L&P's delivery of its GLA approved (and funded) business plan. Therefore, the potential benefits, consequences, risks and resulting necessary actions must be considered before any decision is taken in this regard.

GLA's Investment and Performance Board approved this proposal in principle on October 30th 2015.

Decision:

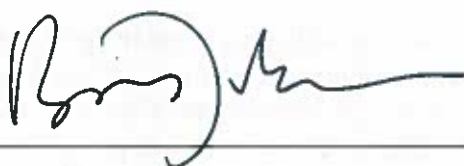
That the Mayor, exercise of rights reserved to him under London & Partners' articles of association, consents to London & Partners' establishment of a new subsidiary company called London and Partners Ventures Limited.

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:

28/01/16

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

Decision required – supporting report

1. Introduction and background

- 1.1 London & Partners Limited is a “not for profit” company engaged in the promotion of London. It is funded by a grant from the GLA, contributions from private sector partners and revenue generated from commercial activities. A key element of the company’s strategy, as agreed with the GLA, is to increase its commercial income alongside the GLA grant, in order to reduce reliance upon public funding and generate additional jobs and growth in London.
- 1.2 Under European law, where public resources are used to provide support to an entity operating on a market for which there is competition (“undertakings”), it is necessary to consider whether or not such support constitutes State aid and if so, whether it is compatible with the provisions of the Treaty on the Function of the European Union (TFEU). Under TFEU, measures that amount to State aid which are not approved by the European Commission (the Commission) or subject to certain statutory exemptions are considered incompatible.
- 1.3 State aid will be considered incompatible and prohibited where all of the following elements are met:
- (a) An advantage, in any form whatsoever, is conferred;
 - (b) which is granted by the State or through State resources;
 - (c) which distorts or threatens to distort competition;
 - (d) which favours certain undertakings or the production of certain goods;
 - (e) which affects trade between EU Member States; and
 - (f) the aid in question has not been approved by law, or under a block exemption approval or an individual clearance from the Commission.
- 1.4 The provision of incompatible State aid may result in lengthy Commission investigations and the ordering of repayment of the aid provided plus compound interest. The likelihood of a challenge may be remote but the impact could be significant. It should be noted that businesses, particularly in the UK where, in general, aid to industry is sparse, are becoming increasingly aware of their right to challenge incompatible aid paid to competitors. The Commission or a national court (the latter following an action brought by a third party) may recover unlawfully granted aid from the recipient. Interest will be charged on the aid. The repayment obligation falls on the recipient entity, but the granting body is required to take all necessary steps to obtain full recovery (regardless of the cost). Competitors may also seek legal action for damages (although this is extremely rare in the UK, the EC is actively encouraging such actions) against the granting body (rather than the recipient entity).
- 1.5 L&P as a single entity operates currently both an entity engaged in activity which may be considered to be of benefit to the public, promoting investment and study in and travel to and through London. It does so in the delivery of its business plan which is reviewed annually by the GLA, funding for which, if such plans are approved by the GLA, is provided by the GLA. As with any publicly funded activity however, an emphasis is placed upon L&P leveraging/generating non-public income to enhance achievement of the aims of public funding and reduce reliance upon the public purse over time.

- 1.6 As a consequence funding recipients may find it necessary to engage in activity which might be considered to be undertaken on commercial markets to generate revenue streams. Because of the State aid doctrine explained in summary at paragraphs 1.2 to 1.4 above there is a risk therefore, that public funding may be considered to constitute the provision of an unfair (incompatible and unlawful) subsidy for commercial activity and satisfies (a) to (f) of paragraph 1.3 above.
- 1.7 Various options to address this were considered and details of these can be found in reserved Appendix 1.
- 1.8 L&P has taken legal advice from its external legal advisors Eversheds which concluded that in order to mitigate State aid risks L&P might consider the establishment of a subsidiary to undertake the commercial elements of L&P's activities and which will be charged for the use of any publicly funded assets/resources on the basis of a transparent market rate. Doing so it is asserted, enables the making of an argument that there will be no selective benefits conferred upon the publically funded entity, L&P (necessary for the presence of State aid) to such activities which make use of publicly funded assets and resources at L&P's disposal, i.e. no unfair public subsidy is being provided.
- 1.9 It should be noted that the establishment and operation of a company does not provide a "cure" for State aid in its own right. It is, however, a mechanism which might be used to assist in demonstrating the implementation of the above "separation" measures required (including market rate recharging as noted above) to show that such companies' commercial activities are not receiving unfair and market-distortive public subsidy. Other "separation" measures include:
- (a) the putting in place of a business plan, based on reasonable and valid assumptions that indicate that the commercial activity can be provided by such companies without public subsidy;
 - (b) accounting separation is observed;
 - (c) a transfer pricing system is put in place to demonstrate that goods and/or services provided by such companies are charged at market rates or in the absence of such rates and full costs plus recovery basis;
 - (d) information barriers are in place where the parents of such companies have information concerning potential competitors in respect of services to be provided which could provide an unfair competitive advantage in that company's provision of goods/services; and
 - (e) governance arrangements are put in place to ensure compliance with the above requirements on an ongoing basis.

2. Objectives and expected outcomes

- 2.1 One objective of establishing a new subsidiary company which is limited by shares and 100% owned by London & Partners Limited and the taking of separation measure in this regard is to account for the following income streams and associated costs:
- Commission on bookings and advertising revenue from L&P's websites
 - Rental income from L&P's premises
 - Fees charged for services to third parties
- 2.2 A second objective is to mitigate the risks of a state-aid challenge to an acceptable level by structuring the group so that it is simple to demonstrate that non-grant income-generating

activities operate on a commercial basis and are not subsidised by the grant/grant funded assets.

- 2.3 A third objective is to maintain a financial reporting system that enables all commercial activities to report results on a full cost basis clearly. Clearly document the methodology for cross-charging between companies.
- 2.4 While achieving the above, the final objective is to keep the structure as simple as possible, comply with legal and tax obligations and manage the group's tax charges efficiently.

3. Equality comments

- 3.1 Equality issues have been considered in the process of arriving at the recommended decision. No equality issues have been identified.

4. Other considerations

Key Risks & Issues

- 4.1 One of the aims of the establishment and operation of a new subsidiary is to mitigate State aid risks. The establishment and operation of the subsidiary and the separation measures noted at paragraph 1.9 above can be considered to be facilitative of this aim.
- 4.2 Another risk relates to tax. L&P prepared a model (see Appendix 2) considering the various options and their impact on the total net tax cost. The models prepared by L&P have been reviewed by Grant Thornton, which concluded that all necessary issues relating to VAT and corporation tax had been taken into account. Detailed copies of these models have been discussed with the GLA tax specialists and Head of Financial Services.
- 4.3 It should be noted that while the subsidiary company will help achieve the objectives set out above in Section 2, the GLA should retain the right to scrutinise all of L&P's activities, regardless of funding source or 'lead organisation' (i.e. London & Partners Limited or London & Partners Ventures Limited) – given the intrinsic link between all funding sources and the delivery of L&P's business plan, as well as any potential reputational matters that may arise for the Mayor as a result of L&P's activities. The GLA must also remain in a position to be able to claw back funding from L&P in case of breach of funding conditions. Officers will ensure, in the event that it is proposed that the Mayor entertain consenting to the establishment of the subsidiary, that, in so far as may be necessary, it secures by variation of its funding agreement or otherwise (as appropriate) enforceable rights required in this regard.

Links to Mayoral Strategies

- 4.4 The establishment of London & Partners Ventures Limited will support L&P's work promoting London as the world capital of business, the world's top international visitor destination and the world's leading centre of learning and creativity. This proposal is in line with the first objective of the Mayor's Economic Development Strategy.

5. Financial comments

- 5.1 The financial impact of creating a subsidiary has been modelled in reserved Appendix 2.
- 5.2 A letter from the Chief Operating Officer of L&P addressing potential taxation issues has been attached as Appendix 1.

- 5.3 There are no financial implications for the GLA and the modelling does not envisage any reduction in the level of grant payable by the GLA to L&P.

6. Legal comments

- 6.1 The foregoing sections of this report indicate that:

6.1.1 the decisions requested of the Mayor, whilst concerning powers reserved to him under London and Partners' articles of association, fall within his statutory powers and duties, acting on behalf of the Authority, to do anything which is facilitative of or conducive or incidental to the promotion of economic development and wealth creation in and tourism to in and through Greater London; and

6.1.2 in formulating the proposals in respect of which a decision is sought officers have complied with the Authority's related statutory duties to:

- (a) pay due regard to the principle that there should be equality of opportunity for all people;
- (b) consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom; and
- (c) consult with appropriate bodies.

6.2 If the Mayor is minded to make the decision sought, officers should ensure, in so far as they consider necessary, that they secure, by variation of the GLA's funding agreement with London and Partners, or other binding and enforceable arrangements (as appropriate), enforceable rights enabling the effective protection of the GLA funding.

6.3 Legal comments concerning steps L&P propose are taken to mitigate potential State aid risks are incorporated within the main body of this report.

7. Investment & Performance Board

7.1 On 30th October 2015 IPB received the report which set out proposals from London & Partners to establish a new subsidiary company to be called "London and Partners Ventures Limited".

7.2 It was agreed the proposal for L&P to establish a new subsidiary company – London and Partners Ventures Limited – be approved in principle.

8. Planned delivery approach and next steps

8.1 The next steps commencing MD approval are summarised below:

| Activity | Timeline |
|---|-----------------|
| MD Approval | January 2016 |
| Permission to Establish Company | January 2016 |
| Finalise legal documents and system applications needed for new company | January 2016 |
| Commence accounting for transactions in the new company | January 2016 |

Appendices and supporting papers:

Appendix 1: Letter from L&P Chief Operating Officer

Appendix 2: Options Appraisal & Reasons for Recommendation

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? NO

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:

Katherine Davies has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

Assistant Director/Head of Service:

Mark Kleinman has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Sponsoring Director:

In Fiona Fletcher-Smith's absence, Mark Kleinman has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Joe Mitton has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. J. Ellis

Date

25.1.16

CHIEF OF STAFF:

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

Signature

Edmund Hill

Date

26.01.2016

