

Investment Board

Date	15 th August 2022
Report title	WMCA Position regarding funding and investments in relation to overseas or offshore companies
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Report has been considered by	N/a

Recommendation(s) for action or decision.

Investment Board is presented with this paper for information only:

1. Purpose

- 1.1 The Investment Board requested that the WMCA set out its guidelines for dealing with Offshore and/or overseas companies. This was prompted by a recent proposal and investment Board deemed it appropriate for guidance to be prepared.
- 1.2 This paper is a guidance document and therefore does not require approval. It is presented for information only, however any comments made are welcomed and would be considered by the WMCA Officers.
- 1.3 The paper concludes that it is possible for WMCA to consider investments with Overseas and Offshore entities provided that due care and attention is exercised and only when required conditions apply as detailed in this paper under the General Principles section (4.8)

2. Introduction

- 2.1 This briefing has been written following presentation of a Business Case for a grant from the devolved Housing, Regeneration and Land Funds, to an Applicant for brownfield gap funding.

The application caused the Investment Board to request consideration of the WMCA position regarding funding for offshore or overseas companies.

A registered overseas company is a company which registers in a place overseas and regards this place as one of its main markets at the same time (“Overseas Company”). “Overseas companies” are defined in the Companies Act 2006 as being incorporated outside the UK. An Overseas Company may or may not have a permanent “establishment” in the UK registered at Companies House. A registered offshore company refers to a company which registers in an offshore jurisdiction but does not operate in this jurisdiction (“Offshore Company”).

It is not uncommon for Real Estate companies to have a link to an Offshore or Overseas entity, however where this is the case then additional care is required due to such matters as ensuring compliance with Anti-Money Laundering legislation (see below).

3. Scope

- 3.1 This briefing covers consideration of all real estate grant applications under the remit of the Housing, Property and Regeneration Directorate or the Investment and Commercial Activities Director and those investments proposed by WMDC, namely through BLPDF and the real estate debt funds CIF and RIF, and /or any future fund. It is solely a statement of the approach the WMCA takes to an applicant or beneficiary when an Overseas or an Offshore company, or the parent company meets this definition.
- 3.2 The briefing does not cover the process or rationale for making investments or grants. That process is set out in the relevant governance documents such as the Constitution, the Single Commissioning Framework and Single Assurance Framework.

4. Background

- 4.1 One of the purposes of the WMCA is to encourage and facilitate inward investment. The WMCA invests in and provides grants to UK registered companies]. All the outputs of an investment or grant are for the benefit of the residents and the areas within the West Midlands Combined Authority.
- 4.2 Some companies seeking grants or investment are UK registered but have a parent company domiciled Overseas or Offshore (defined above). Due diligence is undertaken in relation to all companies the WMCA invests in, provides grant-funding to, or does business with.
- 4.3 The WMCA will always invest in or provide grant to a company that has a UK entity and contract with the UK entity for example, where an Overseas Company or Offshore Company is seeking a grant for a West Midlands investment, then they will be required to set up a UK registered company in order to receive the grant (if they do not already have one).

4.5 **How Investments or grants are made.**

The WMCA will assess each investment or grant subject to the criteria specific to that funding source. This will mean that each case is considered upon its merits, a decision is made by the Senior Responsible Officer (SRO) (usually the Executive Director or their nominee) to recommend it and the Single Assurance Framework is followed as well as any other applicable governance that applies, such as the Single Commissioning Framework for the devolved Housing, Regeneration and Land Funds.

In all cases involving third parties, due diligence is undertaken on the company or individual that will benefit directly from the transaction. The timing and type of due diligence will be determined by several factors such as, type of organisation, risk profile of the transaction, financial and reputational exposure, and tax considerations. Full due diligence will take time and can be expensive, as such it is not effective in most cases to complete full due diligence ahead of a decision to invest made by the relevant approval body. Due diligence is however completed before a contractual commitment is made and this is undertaken to the satisfaction of the WMCA Statutory Officers. It is important to note that the decision-making body, such as Investment Board, can impose any conditions it wishes to the approval, including specific due diligence. All grants and investments are legally documented and will reflect all conditions made. Depending upon the complexity of the documentation, the funding agreement is completed by the WMCA in-house Legal team, or an external firm of Lawyers approved by the WMCA Legal team.

All grants and investments are subject to final approval at a Delegated Sign Off (DSO) meeting that includes the s.151 Officer, the Director of Law and Governance (the Monitoring Officer) and the relevant Executive Director for the project. At this point the contract and full due diligence is discussed and any issues dealt with before the final approval to enter into contract.

4.6 **Due Diligence on Beneficiaries**

Due diligence will vary from project to project and its extent will be dictated by the risks inherent within the project. It will, however, always include gathering of information on the recipient of the grant. This includes:

- Where sales are made, the party purchasing.
- Where purchases are made, the party selling.
- Where a grant is made, the recipient.
- Where an investment (such as a loan or equity) is made, the recipient.

Due diligence also includes all connected parties to the transaction where they have a share- holding of greater than 25%, known as Persons with Significant Control as defined in the Companies Act 2006.

Due diligence of this nature is important to ensure that the WMCA is compliant with Anti Money Laundering Regulations and any other laws such as Sanctions Regulations. It

includes the Know Your Customer (KYC) requirements. The KYC requirements of Homes England provide a good practice guide to the steps necessary under KYC and will be followed by the WMCA. They can be found here.

<https://www.gov.uk/government/publications/know-your-customer-guidance/know-your-customer-guidance-accessible-version>

The due diligence includes, in cases where there is an Overseas parent company or the parent company is an Off-shore company, consideration of UK legislation containing various anti-avoidance provisions limiting the advantages accruing to UK investors who choose to invest in offshore funds rather than UK-based vehicles.

Where West Midlands Development Capital are contracted to provide an investment service, such as under the CIF, RIF or BLPDF, they are responsible for the KYC and have their own legally compliant policy. They also provide professional indemnity insurance. The WMCA must still be satisfied with the KYC checks.

It is recommended that in cases where there is an Overseas/ Off-shore company as parent or guarantor that all due diligence is undertaken by a competent external party to provide additional assurance for the WMCA.

4.7 Guarantees

In some instances, the WMCA may seek to increase the security package offered by an applicant through taking guarantees from another company or individual. It is not a common practice.

In order to be effective, the Guarantor must have commercial benefit in supplying the guarantee to the applicant company. Therefore, in many instances the entities will be part of the same group and the guidance note will already have covered what is required. (Companies are generally said to be in the same group if the same company owns them (i.e., they have the same parent company) or if one of them owns the other (i.e., one is subsidiary of the other)

In rare instances, the Guarantor and Guarantee have a commercial relationship where benefit flows but are not part of the same group. Where this situation arises and the Guarantor is an Overseas or Offshore company, then this guidance note applies to the considerations of whether a Guarantor is acceptable.

4.8 Overseas and Offshore Companies General Principles

Investments by the WMCA involving Overseas or Offshore Companies by means of Grant or Debt [e.g. CIF, RIF or other debt approved] are allowed provided that the guidance is followed.

It is important to note that grants and investments will always be contracted with the beneficiary recipient which will be an UK registered company, this includes Special Purpose Vehicles that are UK registered but have Overseas or Offshore ownership. All funding payments will be made to a UK Bank account of the UK registered company. The aim of this provision is to ensure transparency, and to act in accordance with Anti-Money Laundering requirements.

The making of investment or grant to a beneficiary that has Overseas or Offshore ownership, is therefore allowed by the WMCA provided that the beneficiary passes KYC checks and the recipient is deemed unlikely to cause reputational damage to the WMCA.

As outlined above, it is good practice for the Officer dealing with the particular case to begin company due diligence ahead of presenting an investment decision to the approving body as soon as possible. This need not be completed until a binding offer of funding is made, however the risks where an Overseas or Offshore company are involved is significantly higher than dealing with a UK registered company with no Overseas or Offshore element. It is therefore recommended that in such cases due diligence is more extensive ahead of presentation to an approving body.

Regarding applications where the Overseas or Offshore element of the application is an entity registered in known tax havens, this clearly warrants further investigation as to rationale for the structure. The Officer dealing with the application should ensure that they investigate and request details of the structure/beneficial ownership, the reasons for setting up such a structure and, if necessary, obtain independent professional confirmation to support the applicant's request, usually in the form of an opinion letter from a law firm located within the overseas entity's jurisdiction (suitable firms can be instructed by WMCA Internal Legal services). Early referral to the appropriate SRO should be undertaken if satisfactory responses are not received. It is recommended that in such cases, full professional due diligence is undertaken before presenting to the decision-making body.

It is the role of the SRO to ensure that the Anti Money Laundering/ Know Your Customer checks are completed by a company or persons who have the skills, expertise and resources to help ensure the WMCA is compliant with Anti-Money Laundering legislation and other relevant legislation.

The decision to contract will be made at the Delegated Sign Off meeting. This meeting (described above) is always held before legal completion of the transactions outlined here and convenes the WMCA SRO, Finance, Legal and Governance functions. Therefore at this point completion of formal Due diligence will be confirmed as satisfactory.

5. Financial Implications

- 5.1 There are no direct financial implications as a result of the recommendations within this report.

6. Legal Implications

- 6.1 There are no direct legal implications as a result of the recommendations within this report.

7. Equalities Implications



7.1 There are no equalities implications as a result of the recommendations within this report.

8. Inclusive Growth Implications

8.1 There are no inclusive growth implications as a result of the recommendations within this report

9. Geographical Area of Report's Implications

9.1 There are no geographical implications as a result of the recommendations within this report

10. Other Implications

10.1 Not applicable.

11. Schedule of Background Papers

11.1 None.