

Cabinet Sub-Committee
(Kyndi Ltd Shareholder Board)

11 June 2024

Reports by the Board of Directors

Report from/author: Bhupinder Gill, Assistant Director Legal and Governance

Summary

Kyndi Board of Directors have submitted a number of reports for consideration by the shareholder board. In respect of each report, the shareholder board is requested to receive the report, provide any feedback on to the Chief Executive and the Chair of the Board of Directors, provide a steer on any matter arising and request any further information/ reports on matters of interest /concern to the shareholder board.

1. Recommendations

1.1 That in respect of each report contained within (Appendix A), the Cabinet Sub-committee:

1.1.1. notes the content of the report;

1.1.2. provides a steer on the contents of the report, any matters specifically raised by the Board of Directors and or generally

1.1.3. considers if it requires any further information reports.

2. Suggested reasons for decision(s)

2.1 The Sub-committee is requested to consider the recommendations above and approve those which are each relevant to each report received to make sure that the shareholders views are communicated to the company and that the councils objectives for the company are being delivered.

3. Budget and policy framework

3.1. The decisions are within the council's policy and budget framework including the Council Plan. The receipt of regular reports to shareholder board and the opportunity to hold to account the Chief Executive and the Chair of the Board of Directors in respect of the company's performance aids and enhances transparency and accountability of the Council's LATCOs.

4. Background

- 4.1 In December 2023 the Cabinet approved the establishment of three shareholder boards (Cabinet Subcommittees) one for each of its LATCos. At the inaugural meetings of the shareholder boards (save for the subcommittee for Medway Norse), each subcommittee approved revised Articles of Association and a Memorandum of Understanding (MOU).
- 4.2 The MOU detailed a reporting schedule to ensure that the shareholder boards received regular reports on the performance of the company and other matters so that the shareholder boards could exercise appropriate oversight and corporate governance over the activities of the company.
- 4.3 The company has submitted the following reports (contained within Appendix A) for consideration by the Shareholder Board
 - 4.3.1 Non-executive director skills/ experience matrix
 - 4.3.2 Non-executive director recruitment process
 - 4.3.3 Remuneration Policy

5. Client Officer observations and recommendations

- 5.1. The lead client officer for this LATCO is the Assistant Director Adult Social Care, the majority of the trading activity conducted by the LATCO is supplied to services within their span of their responsibility. The reports listed in paragraph 4.3 above comment on governance arrangements, this covering report to the sub-committee has been produced by the Assistant Director for Legal and Governance.
- 5.2. **Skills and experience Matrix (Appendix A, para 4)**
 - 5.2.1. The LATCO officer management team is supported by a number of Non Executive Directors in managing the affairs of the business. The NEDs can bring with them a wealth of experience from business and other sectors that can enrich the decision making in the business, provide an insight into the commercial world which those in the public and not for profit sectors may not have experienced.
 - 5.2.2. It is important that the LATCO board consist of NEDs who between them have a broad range of skills and experience that they bring to the company, and hence the companies Chief Executive, in consultation with the current Board members was required to produce a skills and experience matrix to identify current strengths and identify those areas greater support would be invaluable.
 - 5.2.3. The Articles of Association (para 21.1) state that the LATCo shall not have less than 5 and no more than 10 Directors. The company currently has two NEDS. The Sub-Committee are requested to critically review the skills and experience matrix (Appendix A) and

provide a steer to the company Chief Executive and the Chair of the Board on its contents, in particular:

- (i) if you agree with the assessment
- (ii) any other observations (additions/deletions/ remediation)

5.3. Recruitment Process (Appendix A, para 4.)

5.3.1. The Articles of Association (paragraph 21) provides detail on the recruitment and number of directors to be appointed;

21.2 Prior to advertising seeking applications for directors the board of directors shall obtain the agreement of the shareholders as to

21.2.1 the number of directors to be appointed,

21.2.2 the skills and expertise that they seek

21.2.3 the evaluation matrix to assess candidates (to be inclusive of a candidates local connections)

21.2.4 term of office for appointees

21.3 Following a recruitment exercise and prior to offering a role as a director, the board of directors shall consult with the shareholder and ensure that they have no well founded objection to the appointment. (Same well founded objection process to be followed as applicable to the appointment of senior officers in local authorities).

5.3.2. Thereafter, it is for the company, by ordinary resolution to appoint directors where no well-founded objections have been raised.

5.3.3. The Company have shared a proposed recruitment process and timeline for consideration by the shareholder subcommittee. The appointment of directors is a reserved activity (to the subcommittee, para 4 scheme of delegation).

5.3.4. Existing NEDS are automatically appointed for a period of twelve months following adoption of the revised articles and thus there is no requirement to approve their appointment.

5.4. Remuneration policy (Appendix A)

5.4.1. The Articles of Association (paragraphs 23 and 24) state

23. DIRECTORS' REMUNERATION

23.1 Directors may undertake any services for the Company that the Directors decide.

23.2 *No Director shall be entitled to any remuneration from the Company in their capacity as a Director unless it is specified in a remuneration policy approved by the shareholder.*

23.3 *Subject to 23.2, a Director's remuneration:-*

23.3.1 *may take any form; and*

23.3.2 *may include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that Director.*

23.3.3 *accrues from day to day.*

23.4 *Unless the Directors decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.*

24 DIRECTORS' AND OFFICERS' EXPENSES

24.1 *The Company may pay any reasonable expenses which the officers (including alternate Directors and the secretary) properly incur in connection with their attendance at:-*

24.1.1 *meetings of Directors or committees of Directors;*

24.1.2 *general meetings; or*

24.1.3 *separate meetings of the holders of any class of shares or of debentures of the Company*

24.1.4 *shareholder board meetings, meetings with the chair of the aforesaid, the shareholder nominee or the client representative*

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

5.4.2 The production of a policy allows for greater transparency, aids recruitment to the roles and ensures consistency across the LATCOs, if appropriate. The subcommittee are requested to consider the remuneration policy submitted and if satisfied, to approve the same with or without revision.

6. Monitoring Officers report on use Delegated powers.

- 6.1 The Cabinet agreed to delegate authority to the Assistant Director, Legal and Governance, in consultation with the relevant Chairperson for each shareholder board, to take decisions that are required as a matter of urgency (decision No.115/2023).
- 6.2 On 5 May, following consultation with the chairperson, the Assistant Director Legal and Governance approved the appointment of KLSA as auditors for Kyndi Ltd.
- 6.3 At its last meeting the subcommittee approved the revised Articles of Association and requested the company board to adopt the same. The board have approved the same however their adoption also requires the approval of a special resolution by the shareholder, such approval was implicit in the aforesaid subcommittee resolution. The Assistant Director for Legal and Governance will sign the resolution on behalf of the shareholder following the meeting of this subcommittee.

7. Advice and analysis

- 7.1 The company has submitted a skills and experience matrix, remuneration policy and recruitment process for consideration by the shareholder board.
- 7.2 The skills and experience matrix will need to be utilised to identify gaps in the constitution of the company board and seek to mitigate against any omissions when the recruitment process is undertaken.
- 7.3 A brief outline of the recruitment process is set out in Appendix A. The shareholder may wish to be involved in the recruitment process for another three NEDs, if so it should provide that steer at the meeting.
- 7.4 The company has provided the results of a market benchmarking exercise regarding the remuneration of NEDs. The shareholder may wish to comment on the proposals.

8. Risk management

- 8.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Insufficient oversight of LATCO activity and performance	The company's objectives and performance do not align with the councils aspirations	Shareholders boards have been established to received regular reports for the LATCO and provide steer to the company Chief executive and Chair of the board of Directors on their expectations	CIV
Council exposure to unknow risks	The company's activities expose the council financial and or risk	Regular reporting to the shareholder board on activity and risks	CIII
		A scheme of delegation ensure more significant decisions are taken at more senior levels within the company/ council.	CIV

For risk rating, please refer to the following table.

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

9 Consultation

9.1 Internal consultees have completed the relevant sections of this report.

10. Climate change implications

10.1 [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.

10.2 There are no direct implications arising from this report, any that do arise are contained within the individual reports from the LATCO.

11. Financial implications

11.1 There are no direct financial implications arising from this report. Any costs incurred will be borne by the company and will be reflected in its trading accounts.

12. Legal implications

12.1 The shareholders own the business, however the day-to-day management of the business is the responsibility of the Chief Executive and the Board of Directors. The shareholders responsibility derives from the Articles of Association (which set out the company's purpose and governance framework) and the Memorandum of Understanding sets out the operational decision-making framework.

12.2 As a shareholder, the sub-committee is entitled to receive regular reports from the Board of Directors on the company's activities, its performance, outlook over the next quarter and beyond. The shareholders need to be confident that the company's Chief Executive and the Board Directors can deliver on the approved business plan and to be informed if there are any material changes to the business plan or divergences from expected returns.

Lead officer contact

Bhupinder Gill
Assistant Director Legal and Governance
bhupinder.gill@medway.gov.uk

Appendices

Appendix 1 - Non-executive director skills/ experience matrix, Non-executive director recruitment process, Remuneration Policy

Background papers

None