

Council Interests in Companies

GUIDANCE NOTE & EXAMPLE CODES OF GOVERNANCE



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Lawyers in Local Government

Where the Code is from

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AND OTHERS

With thanks to

Those who attended the consultation sessions and discussions

- LLG Monitoring Officer Conference & LLG Commercialisation Conference

The partner firms who discussed it with us

- ***Trowers and Hamlins***
- ***Bevan Brittan***
- ***Weightmans***
- ***Eversheds***



WHY?

GOVERNANCE AND CONFLICTS OF INTEREST

- Ownership and accountability
- Company control: directors, officers, Members and scrutiny
- Having a Code of Practice & Principles of Governance of Council Companies



Councils will have shares in several companies

To make money or to trade - *why we're here*

- Except where expressly authorised, a council can only do something for a commercial purpose (ie trading) through a company

Some are for community reasons

- As part of community interest company (CIC) or charity and interest is limited by guarantee

Some are for project reasons

- Council holds an interest in a special purpose vehicle for build projects (e.g., PFI deal with a builder)

For alternative delivery

- In-sourcing of contract of 'half-way' Teckal company

Question of Why



Knowing
when there is
an
opportunity or
a need to
enter or
create
markets



Question of How

Council is permitted to own interests in companies, but the establishment and structure and financing is tightly regulated

Plus lots of ideas, from lots of directions, each re-inventing or copying the previous (linked?) wheel



Question of Governance

In separate legal entities, each acting in their own best interests, how to best manage the interface between

- the proper governance of democratic body, the Council, investing public money and having regulatory stewardship over a separate commercial entity and
- the proper internal governance that commercial, fast moving, 'for profit' trading company

leading to a potential list of conflict of interests, cultures and approach!



Internal Problems?

Clash of ignorance

Clash of culture

- Politics
- Information

Re-inventing the wheel



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Answer

Was to develop a blueprint and guide

GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES CODE OF PRACTICE





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GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES

What's what: to explain the law and what things are:

- local authority trading
- the local authority company
- other local authority entities (including Limited Liability Partnerships)

What guidance is there out there for this:

- Generic plus old but still useful

Principles to be adopted and guide relationships:

- Like the Code of Corporate Governance generally - important

Likely structure:

- Suggestion here, but most adaptable for own purposes



CODE: Principles of Governance of Council Companies

I. Controls and freedoms

“It is recognised that, whilst appreciating this should not be unfettered, a trading company needs to be given commercial freedoms to enable it to succeed. / Accordingly

the company will be provided with sufficient freedoms to achieve its objectives; and

the Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.”



CODE: Principles of Governance of Council Companies

II. Relationship, integrity and accountability

“It is recognised that, whilst appreciating its procedures operate in a way that protects the company’s commercial interests, those procedures should ensure that the Council can carry out its functions as an investor, as a trustee of public funds and a local authority committed to both due responsibility for the exercise of its functions and for providing a vision for the [Council area].

“Accordingly ...



CODE: Principles of Governance of Council Companies

“... governance arrangements will seek to ensure that:

- the executive can make investment decisions based upon complete and accurate consideration of business cases and business plans;
- the executive can evaluate social and financial benefits and returns on investment; and
- the Council’s overview and scrutiny committees are able to exercise their powers in relation to the executive’s decision making in a manner that ensures the companies can provide full and frank financial and business reporting against their business plans and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.



CODE: Principles of Governance of Council Companies

III. Understanding of roles

“It is recognised that, as company ventures have a separate legal personality to the local authority, the success and good governance of the company venture depends upon those involved understanding their role and responsibilities collectively and individually.

“Accordingly ...



CODE: Principles of Governance of Council Companies

... governance arrangements will seek to ensure that there is sufficient induction, training and other materials in place so that:

- their legal duties;

- stewardship of assets;

- the provisions of the governing documents;

- the external environment; and

- the total structure of the organizations and the venture

are appropriately understood by Members of the Council in their role as part of the executive or of overview and scrutiny, by officers of the Council associated with these duties and by the directors of the companies.



Suggested Structure

Sections follow on the content, role and purpose of

5. Ownership and Control of the Company
6. Shareholder Group
7. Scrutiny
8. Investment and Finance
9. Companies Structure
10. The Company's Board
11. Conflicts of Interest
12. Managed Services, Support Arrangements and Employees
 - A1. Shareholder Group Terms of Reference
 - A2. Shareholder Agreement Outline
 - A3. Director's duties briefing note

LOCAL AUTHORITY

Holding Company

Trading
Company

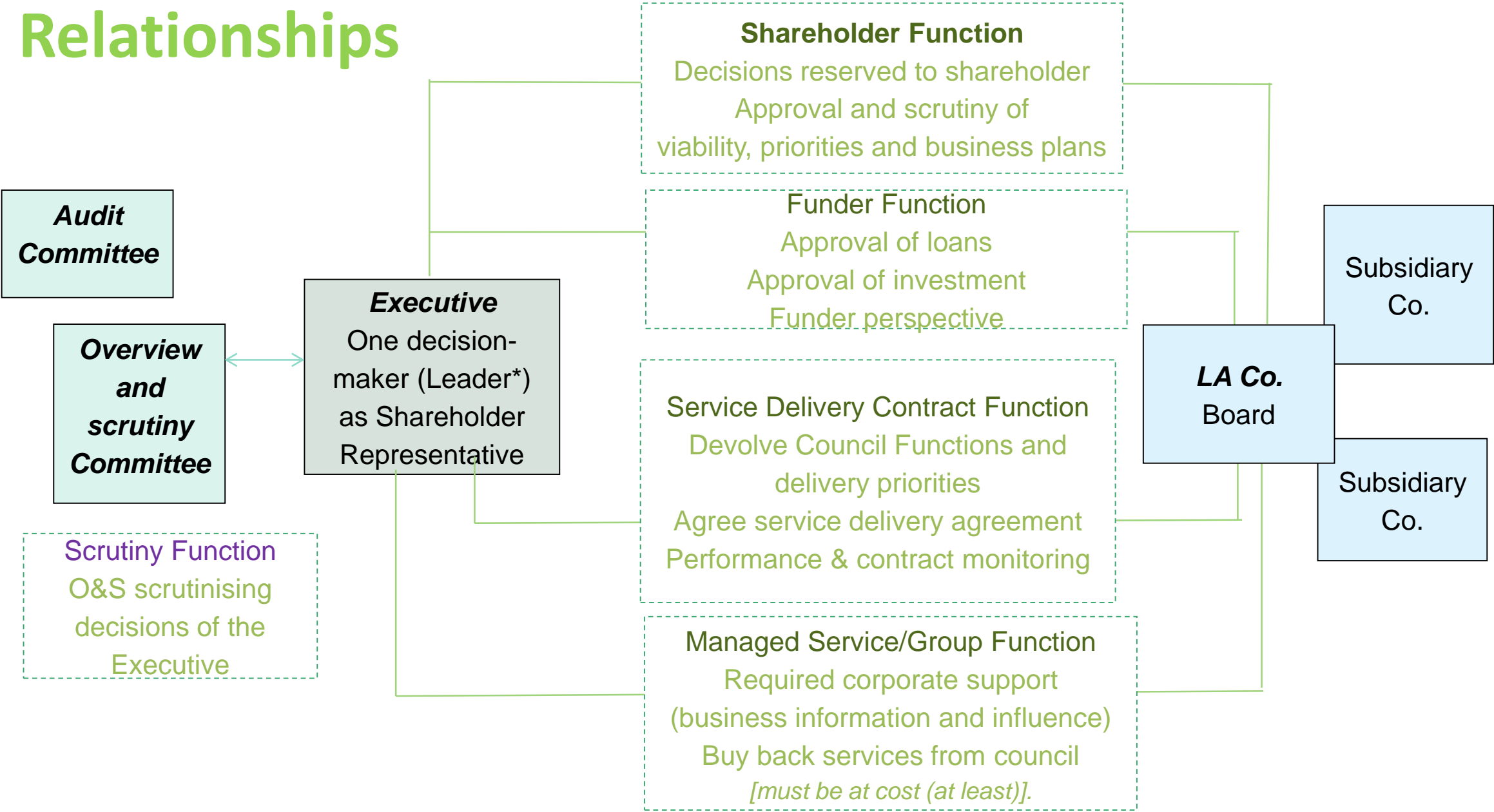
Teckal
Company

Joint
venture
Teckal
Company

Joint
venture
Trading
Company

- Secondment per hour
- Pro-rata licence
 - Premises
 - Equipment
 - Services

Relationships

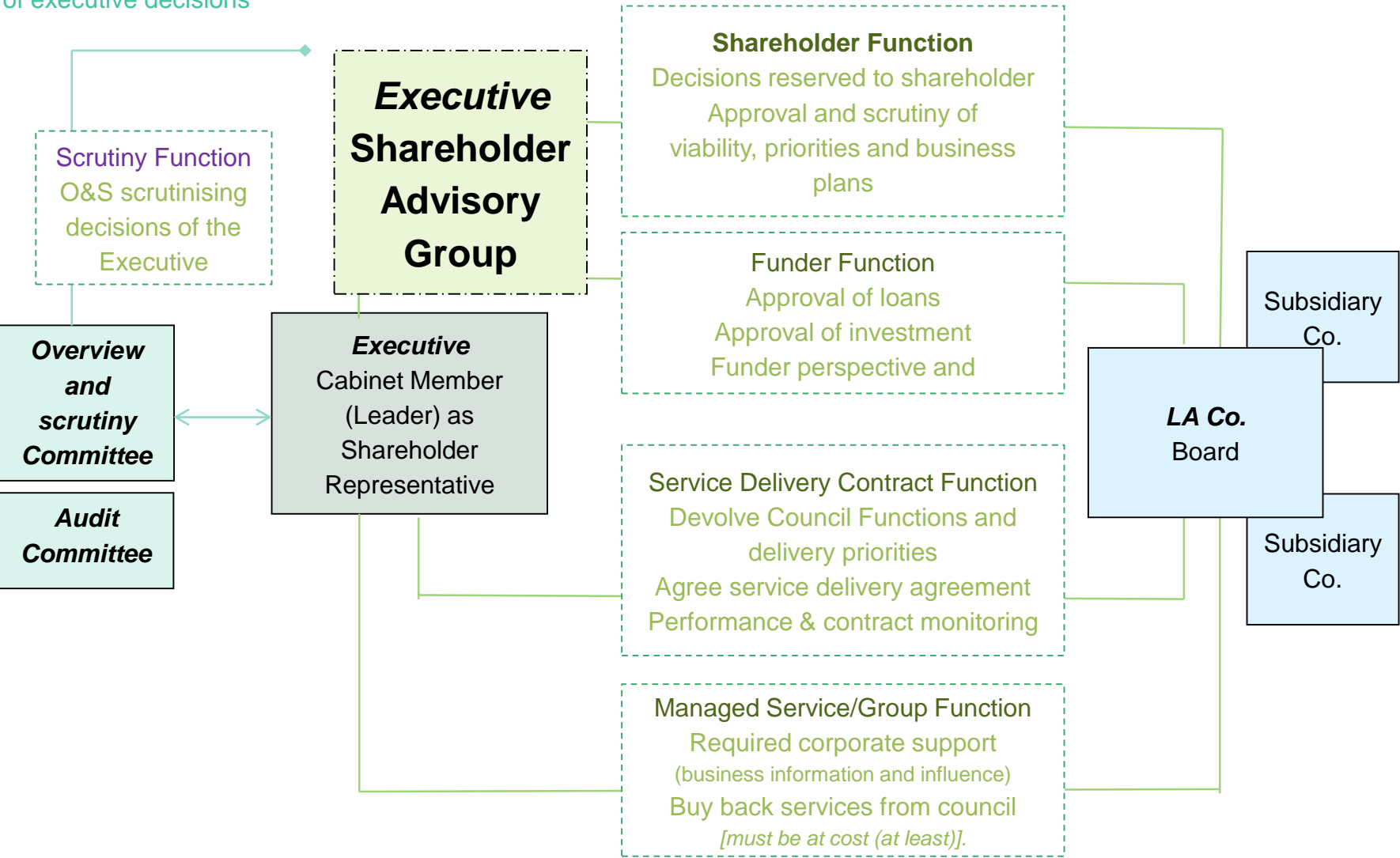


Conflicts

Act in the interests of Council
in scrutiny and review
of executive decisions

Act in the interests of Council as Executive in role
in role as shareholder and scrutiny of companies.

Act in the interests
of the company



Decision making

The Cabinet [Committee] meeting takes key decisions on companies

The Cabinet Member [Committee] holds company and trading companies to account and takes other decisions, which whilst a private meeting must be in the presence of

- the Shareholder Group, which includes Cabinet Member [Committee], officers and independent advisors; and
- the Chair of Overview & Scrutiny Management Board as 'informed observer'



Decision making

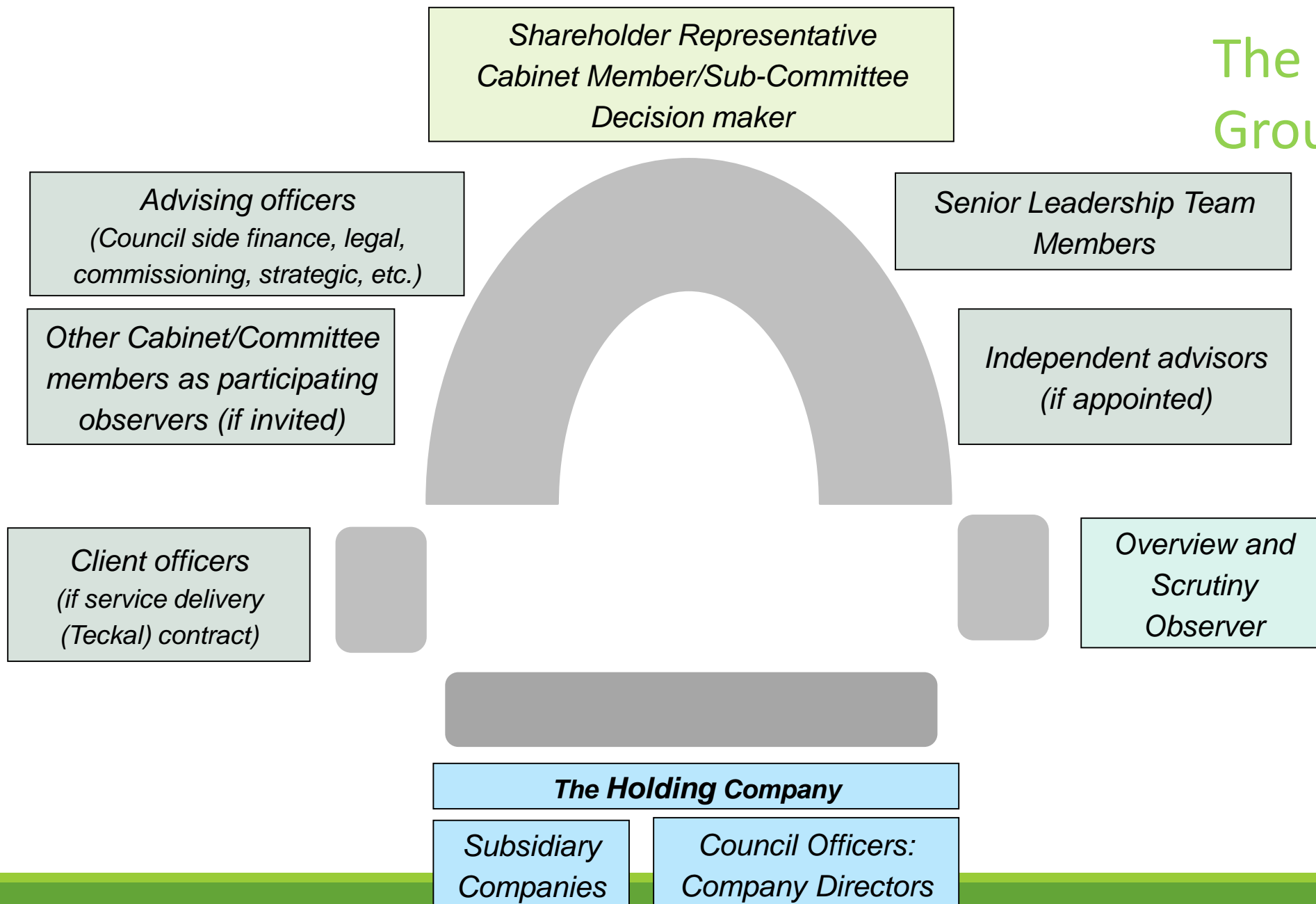
The Cabinet [Committee*] meeting takes key decisions on companies

The Cabinet Member [Officer*] with portfolio holds company and trading companies to account and takes other decisions, which whilst a private meeting must be in the presence of

- the Shareholder Board/Group, which includes the Cabinet Member [officer*], other Members (as invited & non-conflicted), advising officers and independent advisors; and
- the Chair of Overview & Scrutiny Management Board as 'informed observer'

** committee structure*

The Shareholder Group or Board



The Shareholder Group or Board

