

There is no particular requirement in the LGA 02 that a local authority record its compliance with its obligations in section 101. Practically, we expect that many principal shareholding local authorities will have addressed the matters in section 101 in their decision-making analysis contained in statements of proposal and reports to Council on the LGFA (whether explicitly or not).

We are aware that there may be some concern with whether the utilisation commitment is consistent with the prudence requirement in section 101(1). Potentially, agreeing to the utilisation commitment could mean that a local authority would be bound to borrow at a higher rate on some of its borrowings than it might be able to obtain not going through the LGFA.⁵

Ultimately, it is up to each principal shareholding local authority to determine its compliance with section 101(1). However, we consider there are a number of factors that would indicate that a local authority could reasonably determine that participation in the LGFA, including agreeing to the utilisation commitment, is consistent with its obligations in section 101(1):

- For the LGFA to be viable, there needs to be some certainty that it will have a reasonable amount of initial business. The utilisation commitment helps create this certainty. Accordingly, even if the utilisation commitment were to prevent a local authority from taking advantage of lower rates not offered through the LGFA, a local authority could nonetheless conclude that participation in the LGFA (which necessarily involves agreeing to the utilisation commitment) will ultimately lead to lower borrowing costs overall for the local authority. Taking into account the long-term benefits of the LGFA is consistent with section 101(1), which refers to promoting both the current and future interests of the community.
- As an investor in the LGFA, a local authority is incentivised to ensure the LGFA is successful. Agreeing to the utilisation commitment will help to give the LGFA a better chance of success.
- The principle in section 14(1)(e) of the LGA 02 (“a local authority should collaborate and cooperate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources”) supports the establishment of the LGFA. It indicates it is appropriate that local authorities work together in situations where co-operation will achieve better outcomes for local authorities overall, eg achieving overall savings in borrowing costs.
- The Local Government Borrowing Act 2011 demonstrates clear support from Parliament for the establishment of the LGFA and recognition that the LGFA is likely to achieve benefits for the local government sector.

If local authorities wish to record the above analysis in their decision-making processes and resolutions of their governing body, they can, but are not obliged to do so. For example, it could be addressed through an internal memorandum from the CFO to the CEO, or covered off (for ‘noting’) in a report to the local authority on execution of the LGFA documents. We are aware that some local authorities’ resolutions already provide a mandate for agreeing to the utilisation commitment.

⁵ For example, in response to the competition created by the LGFA, local banks might potentially offer particularly good rates in an effort to maintain their business.

5. **Has the local authority given authorisation to appropriate individuals to execute LGFA documents on the local authority's behalf?**

Participation in the LGFA will require a local authority to enter into a number of agreements and deeds. It will therefore be necessary for each principal shareholding local authority to have authorised appropriate individuals to sign these documents on the local authority's behalf.

It may be that a local authority's existing delegations are sufficient to provide such authority. If not (or if a local authority simply wishes to specifically address this issue), a local authority can pass resolutions giving specific authorisation in relation to the LGFA documents. A number of local authorities have already made resolutions giving authority to individuals to execute LGFA deeds and agreements on behalf of their local authorities.

We appreciate that local authorities have different practices for the execution of deeds. However, there are some particular legal issues with local authorities executing deeds.⁶ In our opinion, the best way to address such issues is for deeds to be signed by at least two elected members. It is also open to a local authority to have its chief executive sign and to use its common seal if it wishes, provided this is in addition to having two elected members sign.

6. **For 'tight nine' shareholders, has the local authority complied with its directors policy in appointing directors of the LGFA?**

Section 57(1) requires a local authority to adopt a policy on the appointment and remuneration of directors for CCOs.

'Tight nine' shareholders have been involved in the initial appointment of directors for the LGFA. It is up to each of these local authorities to ensure it is complying with its directors policy in making its decisions (eg about who to recommend and vote for). In the event that a local authority wishes to act inconsistently with its directors policy, it can use the process under section 80.

There will be further director appointment decisions once the LGFA is established. These will involve all principal shareholding local authorities, not just the 'tight nine' shareholders.

There is no requirement in the LGA 02 for a local authority to specifically record its compliance with its directors policy. However, in practice, this may be reflected in internal memoranda about decision-making.

⁶ There is some uncertainty as to how local authorities may execute deeds following the enactment of the Property Law Act 2007. Under the Property Law Act 1952, local authorities, as "corporations", were authorised to use the common seal when executing a deed. However, this Act was repealed and replaced by the Property Law Act 2007. Further, section 37L of the Local Government Act 1974 used to require each local authority to possess a common seal. Since the enactment of the Local Government Act 2002 and the repeal of section 37L, this has been implicit only. Under section 9(3) of the new Property Law Act 2007, the requirement imposed on a body corporate to execute a deed is that two directors must sign the deed. However, the reference to "directors" does not sit well in the context of a local authority. In our opinion, the role that is most likely to be equivalent to a director is an elected member.

Summary checklist

Overall, each local authority should ensure the following things have occurred before signing any of the LGFA documents:

- that the local authority has used the special consultative procedure for proposals to become a shareholder in the LGFA and to amend the investment and liability management policies in the long term plan;
 - that the local authority has made resolutions to the effect that it:
 - agrees to participate as a shareholder in the LGFA,
 - amends the investment and liability management policies in its long term plan to enable participation in the LGFA, and
 - authorises individuals to sign LGFA documents on the local authority's behalf (unless the local authority's existing delegations already provide for this); and
 - that the local authority has considered:
 - matters under section 101 in deciding to participate in the LGFA, and
 - its directors policy under section 57 in making director appointment and remuneration decisions,
- and it is optional for such consideration to be recorded in the local authority's decision-making documents.

Provided a local authority is satisfied that it has addressed all of these matters, it is in order for the local authority to sign the LGFA documents from a legal perspective.

