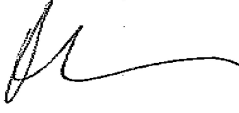




Report to:	Sutton Shareholdings Board	Date:	06 December 2017
Report title:	Update - Cognus Limited		
Report from:	Richard Nash, Acting Director, People Services Directorate (Children's Social Care and Safeguarding)		
Ward/Areas affected:	Borough Wide		
Chair of Committee/Lead Member:	Councillor Simon Wales, Chair - Sutton Shareholdings Board		
Author(s)/Contact Number(s):	Tracey Burley, Managing Director, Cognus Ltd, 020 8770 4039		
Corporate Plan Priorities:	<ul style="list-style-type: none"> • An Open Council • A Green Council • A Fair Council • A Smart Council 		
Open/Exempt:	Open		
Signed:		Date:	24 November 2017

1. Summary

- 1.1 This report follows on from that presented to the Shareholdings Board on 20 September 2017, outlining the actions requiring authorisation to overcome the challenges previously noted with regards to the corporate governance processes.

2. Recommendations

The Sutton Shareholdings Board is recommended to:

- 2.1 Agree that, the Business Plan circulated with a copy of these Resolutions be adopted by the Company taken as the first Business Plan and that action taken in accordance with the Business Plan prior to its adoption be ratified.
- 2.2 Agree that, the 1 issued ordinary share of £1 in the capital of the Company be and is hereby redesignated as an A ordinary share having the rights and being subject to the restrictions as set out in the Company's articles of association (Articles).
- 2.3 Agree that, in accordance with section 551 of the Companies Act 2006, the directors of the Company be generally and unconditionally authorised to allot ordinary shares of any class in the Company up to an aggregate nominal amount of £1000 as detailed in Paragraph 4.2.



- 2.4 Agree that Article 20.2 of the Articles, requiring unanimous consent of the Shareholders to authorise the admittance of a new Shareholder, be deleted in its entirety.
- 2.5 The appointment of the directors of the Company, named in Paragraph 4.5, be ratified from the date of their respective appointments.
- 2.6 Agree that authority be delegated to the Strategic Director of Resources to sign and return the written resolution on behalf of the shareholder.

3. Background

- 3.1 On 20 September 2017, the Sutton Shareholdings Board noted the challenges faced by Cognus (the company) with regards to its set-up and corporate governance processes. The Managing Director and Officers outlined in detail, via a report and presentation, the issues encountered with regards to the shareholders' agreement, the admittance of B Shareholders and the confirmation of the board of directors.
- 3.2 Following that meeting, specialist legal advice was sought on the matter, to determine the most effective means for resolution and to meet the objectives of the company as previously stated and agreed at the Children, Family and Education Committee, Strategy and Resources, and the Sutton Shareholdings Board. Following that advice, the company has circulated written ordinary and special resolutions requesting shareholder consent with regards to:
 - Ratification of the company business plan,
 - Redesignation of the ordinary share,
 - Allotment of shares,
 - Amendment of articles
 - Ratification of director appointments.
- 3.3 At present, the Council remains the only (ordinary) shareholder of the company and as such, only its consent is legally required to take the actions outlined. It must be noted however, that these actions are being taken in order that the company may admit the B Shareholders, as originally desired (and approved by the Council), to participate in future decision-making as authorised.

4. Issues

Redesignation of the ordinary share

- 4.1 The ordinary residual share of the Council must be redesignated in order to allot class shares ('A' and 'B') as intended. Once the share is considered 'redesignated' (at the point at which the members register is written up) the company would need to update its register of members to record the redesignation, the original certificate will be cancelled and a new share certificate for the A share will be issued and the redesignation will be registered at companies house.

Allotment of class shares

- 4.2 In accordance with section 551 of the Companies Act 2006 (CA 2006), the directors of the company request that they be generally and unconditionally authorised to allot ordinary shares of any class in the Company up to an aggregate nominal amount of £1000. It is provided that this authority shall, unless renewed, varied or revoked by the Company, expire 5 years from the date of passing the resolution.
- 4.3 The Company may, before such expiry, make an offer or agreement which would or might require shares to be allotted and the Directors may allot shares in pursuance of such offer or agreement notwithstanding that the authority conferred by the Resolution received has expired. This authority is in substitution for all previous authorities granted to the Directors in accordance with section 551 of the CA 2006.

Admittance of new shareholders

- 4.4 Following the above action, the company can confirm the position of the 'B' shareholders (those previously approved maintained Schools and Academies) by sending a copy of the Shareholders' Agreement, which will have been entered by the council under previously delegated authority, and asking them (the 'B' Shareholders) to return an executed and dated deed of adherence to the shareholders Agreement, confirming that the company may use the £10 previously sent as subscription, or subject to making £10 payment (where no payment has previously been received). The Company's register of members will be updated and the relevant share certificates will be signed and held on the Company's books, the relevant filing will be made at companies house.

Ratification of director appointments

- 4.5 The legal advice sought has advised the ratification of all director appointments to date in order to take a robust approach to corporate governance and overcome any outstanding concerns relating to their means of appointment:
- Tracey Burley;
 - Ian Thomas Comfort
 - Paul William Darvell;
 - Lesley Hobbs;
 - Ros Petra Sutton;
 - William Henry Clapp (having since resigned on 31 March 2017);
 - Rosalind Diane Hills (having since resigned on 2 July 2017);
 - Abigail Louise Macklin (having since resigned on 16 March 2017); and
 - Robert Alan Mcintosh (having since resigned on 20 July 2017).

Amendment of Articles

- 4.6 The current Articles of the Company states that the approval of all shareholders is required to admit a shareholder this contradict the Shareholders' Agreement which requires an enhanced majority (80%) of the shareholders to approve the admittance of a new shareholder. This article is therefore being removed from the Articles. The amendment to the Articles will need to be notified to companies house along with an extract of the resolution approving the change.

5. Options Considered

- 5.1 The proposed course of action is required in order to meet the requirements of the Companies Act 2006 and associated regulations as well as to enable the company to pursue its original objectives. Other options are therefore not available.

6. Impacts and Implications

Financial

- 6.1 There are no direct financial implications of this report.

Legal

- 6.2 On execution of the Shareholders Agreement the effect of the ordinary and special resolutions will be binding as will be the terms of the agreement. The amended Articles of Association will need to be lodged at Companies House.

7. Appendices and Background Documents

Appendix letter	Title
A	Written resolution of Cognus Ltd Company Number 10276456
B	Business Plan
C	Articles of Association

Background documents
Shareholders' Agreement

Audit Trail		
Version	Final	Date: 24 November 2017
Consultation with other officers		
Finance	Yes	Sue Holmes
Legal	Yes	Fabiola Hickson



Equality Impact Assessment required?	No	N/A
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