



Homes &  
Communities  
Agency

# CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 2. Governance and Financial Viability  
Standard Code of Practice

May 2014

# Annex 2. Governance and Financial Viability Standard Code of Practice

*Summary: The Act gives the Regulator the power to issue a Code of Practice. This annex sets out the proposals for introducing a Code of Practice for the Governance and Financial Viability Standard as discussed in chapter 3 of the consultation document.*

## Introduction

### How the Code of Practice fits into the Regulatory approach

1. The Regulator can publish codes of practice where it believes that its standards would benefit from further amplification. This Code is designed to help registered providers understand the Regulator's expectations about the Governance and Financial Viability Standard (the **Standard**).
2. The Regulator adopts a co-regulatory approach to its work. It sets both economic and consumer standards designed to help it to deliver its statutory fundamental objectives.
3. It is the responsibility of the boards<sup>1</sup> of registered providers to meet these standards. The Regulator seeks assurance from registered providers that the standards have been met and where it does not gain sufficient assurance it reflects concerns in a number of ways including its public judgements. The Regulator issues two regulatory judgements; compliance with the governance element of the Governance and Viability Standard and compliance with the viability element. Further detail on our regulatory judgements can be found on the HCA website.<sup>2</sup> If necessary, the Regulator will take action to ensure that registered providers meet the standards and that social housing assets are protected.
4. To help registered providers meet its standards, the Regulator publishes a range of other documents that explain its approach and clarify the issues that are of concern to the Regulator. These are designed to help boards and executive teams ensure on-going compliance with the standards. They include 'Regulating the Standards' which sets out the Regulator's operational approach to gaining assurance on compliance with the standards. The Regulator monitors and reports on risks faced by the sector in its annual 'Sector Risk Profile'. In addition, the Regulator publishes contextual information such as the Global Accounts and the Quarterly Survey which sets out the financial position of the sector and shows how in aggregate it is dealing with key risks.

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<sup>1</sup> Throughout this Code references to registered providers' 'boards' should, where a registered provider does not have a board, be taken to include an equivalent management body as appropriate.

<sup>2</sup> <http://www.homesandcommunities.co.uk/ourwork/regulatory-judgements>

5. This code of practice (the **Code**) is designed to help registered providers to understand what the Regulator is looking for when seeking assurance on compliance with the Standard. The Code amplifies requirements in the Standard by explaining and elaborating on the content, in some cases with illustrative examples.
6. Each section of the Code refers to the relevant paragraph of the Standard. The Code does not elaborate on every aspect of the outcomes and expectations set out in the Standard, only where the Regulator believes that greater explanation will assist registered providers. This should not, however be taken as indicative of the relative importance of different elements of the Standard. Compliance with the entire Standard is required.
7. Examples of how compliance might be achieved are not intended to be exhaustive neither are they intended to be prescriptive. If a registered provider can comply with the requirements of the Standard in a different manner then it is free to do so. If there are any conflicts between the Code and the Standard, the Standard takes precedence.

### **Structure of the Code**

8. The Code is structured so that it follows the layout of the Standard.

#### **Required outcomes**

9. The required outcomes set out high level obligations.
10. The Regulator intends to adopt a purposive approach to the interpretation of the Standard. This means that the Regulator will consider the purpose of the inclusion of the outcomes and expectations in the Standard when assessing compliance with them.

#### *A Governance required outcome*

- A.1 The required outcome relating to governance makes clear that the Regulator expects registered providers, through their relevant governing body, to organise themselves effectively to ensure the delivery of their objectives, including being responsible holders and stewards of social housing assets. The Regulator considers that the reference to compliance with "*law*" in the first bullet point encompasses legislation (including secondary legislation), common law and statutory guidance. For example, a registered provider that is a charity (which includes exempt charities) should comply with the relevant parts of the Charities Act 2011, common (case) law, any statutory guidance regarding charities and any other relevant law.
- A.2 The fourth bullet point of the governance required outcome states that registered providers' governance arrangements must ensure that they: "*safeguard taxpayers' interests and the reputation of the sector*". Reputation is key in maintaining confidence in the sector. The social housing sector has historically benefited from low lending rates and public investment. Confidence in the sector is key to ensuring that this is maintained. Registered providers should ensure that they manage their

businesses and their risks in such a way that they do not negatively impact on the reputation of the sector.

*B Financial viability required outcome*

B.1 The required outcome relating to financial viability makes clear that registered providers should ensure their viability and protect their social housing assets from undue risk. Registered providers should take all such steps as are reasonably necessary to ensure that any activities they undertake are not such as to mean that they place social housing assets, activities relating to the provision of social housing or their own financial viability at undue risk. The Regulator recognises that registered providers should have the flexibility to consider risks in light of their individual circumstances. It is the responsibility of registered providers' boards to satisfy themselves and provide assurance to the Regulator that this requirement is considered appropriately in relation to their own external and internal operating environment. Also that they are satisfied that they will comply with regulatory requirements now and in the foreseeable future.

B.2 Examples of what the Regulator considers to be unacceptable outcomes resulting from social housing assets being put at undue risk are outlined below. These examples are not intended to be exhaustive but rather to give context to the sector in considering the risks within their business:

- loss of social housing assets and/or tenants losing their home or the benefits of being within a regulated sector due to lenders or others enforcing their security or insolvency
- loss of social housing assets where the sale of those assets is the result of poor business planning and decisions or where the sale is being made to make good an unplanned cash shortfall

B.3 The Regulator recognises that every business decision will carry some risk and that sometimes those risks will crystallise. It is not the intention of the Regulator that all social housing assets should remain in the sector in perpetuity. A robust asset management strategy to 'churn' assets thus securing additional value for the provider and for the social housing sector is acceptable. However, in considering this approach, registered providers should assure themselves that they are complying with regulatory requirements including the Value for Money Standard. There is however a difference between managed risk and uncontrolled loss, and boards are expected to manage the business to promote the former and avoid the latter.

**Specific expectations applicable to all registered providers**

Preliminary

The specific expectations set out in the Standard are obligations with which the registered providers must comply. Compliance with the required outcomes is not confined to the specific expectations in the Standard, and registered providers should ensure compliance with the required outcomes in addition to the specific

expectations. This section of the Code is designed to help registered providers understand what the Regulator is looking for when considering compliance with the Standard.

## **Section 1**

The specific expectations in section 1 of the Standard apply to all registered providers.

### **C1.1 Paragraph 1.1: expectations relating to effectiveness of governance arrangements**

- C1.1.1 Registered providers should adopt and comply with an appropriate code of governance. It is a requirement that areas of non-compliance are explained. Registered providers should demonstrate how what they are doing in practice is consistent with both the principles and relevant provisions of their chosen code of governance and overall contributes to sound governance.
- C1.1.2 Registered providers should assess the effectiveness of their governance arrangements at least once a year. The Regulator anticipates that this assessment may vary in terms of depth and scope in line with the internal and external environment the registered provider is operating within. Some parts of a governance review may be carried out to a different timescale than an annual review. Where this is the case, the annual assessment of the effectiveness of governance arrangements should give assurance on the timescale and progress of work on these areas. Notwithstanding this, as a minimum the annual review process should allow the registered provider to give assurance on its compliance with paragraph 1.1 of the Standard. It should also give assurance on the requirement set down in paragraph 1.4.2 of the Standard relating to the registered provider's assessment that its business planning, risk and control framework is effective in achieving the required outcomes.

### **C1.2 Paragraph 1.2: expectations relating to management of registered providers affairs**

- C1.2.1 Paragraph 1.2 of the Standard sets out requirements regarding the management of a registered provider's affairs. It is designed to complement the responsibilities of the board to act lawfully and responsibly.
- C1.2.2 In the context of the social housing sector, the Regulator would envisage that compliance will ensure that key elements of effective governance are in place including, for example:
- 1) That registered providers have the requisite skills and capability to perform their function and that this is continually assessed.
    - Registered providers should have in place an appropriate skills strategy to address the needs of the business. The social housing sector is becoming more complex and the expectation is that continuous improvement in the skills and capacity of registered providers will be necessary to keep up with this development.

- Registered providers should look at whether boards and management have appropriate competencies, experience, and technical knowledge as required by the size, scale and risk profile of the organisation, the business it is involved in or is going to become involved in as well as the external operating environment. In addition to registered providers having the requisite skills to perform their roles, registered providers may wish to consider in particular circumstances whether external expert or other professional support is appropriate. Registered providers should satisfy themselves of the impartiality of any external support or advice.
  - Plans should be in place to address any skills gaps identified (including through bringing in external skills), and such plans monitored to ensure that they are followed through.
- 2) Ensuring affairs are managed with an appropriate degree of independence. Registered providers should consider any requirements appropriate to them. This may include for example, that set out in their adopted code of governance or Charities Law requirements. As part of this, it may be appropriate for a registered provider to consider whether their board is sufficiently independent by the presence of independent and non-executive board members. Such board members should have the necessary independence of character and judgement, but also be free of the kind of connections that may lead to conflicts and interest in order that they manage their affairs in the best interests of the registered provider. The Regulator does not consider it appropriate to stipulate conditions around the independence of board members. However, the Financial Reporting Counsel Code of Governance which contains requirements on independence<sup>3</sup> gives an example of the sorts of things that might be appropriate for a registered provider to consider on independence. Registered providers' boards are expected to assure themselves on how they manage their affairs with an appropriate degree of independence.
  - 3) Ensuring that the board and executive foster a culture of constructive challenge and debate.
  - 4) Ensuring that all material decisions are made with appropriate internal/external expertise or advice.
  - 5) Registered providers should ensure they operate with sufficient independence and that the registered provider is not subject to undue influence from third parties that may lead to non-compliance with regulatory standards. This may be for example, influence from family members or from those who have influence over the operation of the business.

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<sup>3</sup> <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.aspx>

### C1.3 Paragraph 1.3: communication with the Regulator

C1.3.1 Registered providers are required to inform the Regulator at the earliest opportunity about any material issues that indicate that there has been or may be a breach of the standards. This transparency is a fundamental pillar of the co-regulatory approach.

C1.3.2 In determining what is material, providers should have regard to the Regulator's role in respect of the consumer standards. The Regulator may only intervene where there has been a breach of the standard which has, or may cause, serious detriment and are obliged only to disclose those matters which have or may relate to such a breach.

### C1.4 Paragraph 1.4: expectations relating to business planning, risk and control frameworks

C1.4.1 Registered providers are expected to run their businesses and manage risk effectively. To achieve this, they need to ensure business planning, risk management and controls are effective. A business planning, risk and control framework, with the processes and procedures within it, does not have to be captured in a single document. It should be clearly set out, covering all areas of the registered provider's business and should demonstrate that the registered provider fully understands and has considered its operating environment, so that it is able to deliver its business plan and organisational objectives.

C1.4.2 Registered providers should have a clear understanding of their risk tolerances and ensure that they are appropriate to the scale and nature of the activities they are undertaking and their role as a registered provider. Registered providers should ensure that any investment in activities is priced at such a level and has a rate of return which is commensurate to the level of risk presented. Where a registered provider is a charity they should consider this alongside their duties under Charities Law. Registered providers should also ensure they have appropriate mitigation strategies in place and should consider the potential aggregated impact of risks, as well as their impact at an individual level.

C1.4.3 Registered providers must plan to ensure that they have access to sufficient committed and available liquidity at all times. They should understand the timing of cash flows and any conditions for a drawdown so that they can manage cash flow risk. This means registered providers should understand the receipts and costs of the business. For example, rental income, investment in existing stock, the costs of development, receipts from sales and other business, financing costs (loan capital and interest payments) and build sufficient prudence into their plans to cope with changes in timing. In particular, boards should assure themselves that they put funding lines in place in sufficient time to cope with major cash outflows. Boards should ensure that they effectively identify and manage any risks of re-financing whether this be planned or in reaction to changes in the operating environment.

C1.4.4 Registered providers should also look at the relationship between operational and capital cash flows. The Regulator expects registered providers to meet non-

discretionary expenses (including all major repairs (whether capitalised or not) and interest costs) from operating income. Where registered providers are using capital income (for example proceeds from disposals) to meet operating expenses, then boards should ensure that there is a trajectory that ensures that in due course operating cash flows fully cover operating expenses. In the meantime, a plan should be put in place to ensure that exposures can be managed.

- C1.4.5 Registered providers' business plans need to be built on robust and prudent assumptions. Registered providers should assure themselves that the assumptions used are reasonable on the basis of past performance, market conditions, deliverability and forecasts of possible future conditions etc. It is expected that these assumptions will be kept under review and updated in the light of changing circumstances. It is important that registered providers ensure that the plan demonstrably satisfies lenders' covenants, with sufficient headroom to allow registered providers to take remedial action in the event of assumptions within the plan significantly changing or (potentially) not delivering against the plan.
- C1.4.6 In addition to a suitable business plan based on prudent and deliverable assumptions, registered providers need to ensure that they monitor performance against the plan and that remedial action is taken when the plan is not being met.
- C1.4.7 Registered providers need to ensure they have a thorough understanding of the risks to the delivery of their business plan and organisational objectives. These risks should be monitored on a regular basis and adequate controls put in place. The implications for the organisation of these risks should be reflected in management decisions and business planning.
- C1.4.8 The Regulator expects registered providers to understand how business decisions impact on the whole business, and specifically their ability to meet funders' covenants. It expects that boards will receive reports and gain sufficient and timely assurance on the compliance with covenants and understand the risks associated with its level of headroom against their most restrictive covenants on a regular basis.
- C1.4.9 Where significant business decisions are being made (for example, major changes in development appetite, a new major scheme, moving into a new business stream or taking on new sources of funding) the Regulator expects the impact of these decisions on viability (including continued covenant compliance) to be identified and reported to the board and where necessary remedial action to be taken. Registered providers should think about their covenants in the broadest sense (financial and non-financial) and ensure that all the covenants are monitored.
- C1.5 Paragraph 1.5: expectations relating to risk management
- C1.5.1 Boards are the custodians of social housing assets and the financial viability of the registered providers that hold those assets. The responsibility for managing risks, and specifically risks to social housing assets, lies with boards. As social housing is a long-term asset that is normally funded by long-term debt, it follows that boards need to maintain a long-term perspective on the management of risk. They need to



ensure that their decisions do not put short-term gains ahead of the long term sustainability of the business and the security of their social housing assets.

Paragraph 1.5.a): expectations relating to assets and liabilities

- C1.5.2 Paragraph 1.5.a) of the Standard requires registered providers to maintain an up to date record of their assets and any liabilities that may put those assets at risk - particularly those liabilities that may have recourse to social housing assets. Registered providers should think about the position of their assets as a whole, including whether any other entities with which they have links, whether formal or otherwise, could impact on their assets.
- C1.5.3 The primary purpose of this requirement is to ensure that registered providers understand their housing assets and security position and have swift access to this information in relation to decision making and risk management. This includes any obligations and restrictions that relate to individual assets. Such information would also need to be readily available in the event of a potential or actual failure of the registered provider to enable the Regulator to formulate resolution strategies /proposals and to aid a potential rescuer to value the social housing assets.
- C1.5.4 It is for registered providers to ensure such information is accurate and up to date. They should be able to produce an overview for the Regulator at short notice. The records need to cover the breadth of the registered provider's activities and identify its assets and liabilities. The format of such records is not prescribed by the Regulator and the approach taken is likely to vary according to the size and complexity of the registered provider. The Regulator expects that a registered provider's board will oversee the maintenance of these records. Boards need to be assured that the underlying records are accurate, kept up to date and accessible.
- C.1.5.5 Registered providers should consider their liabilities in the widest context. The Regulator considers that the kind of liabilities considered should include items which relate directly to the social housing assets and those which might have an impact on the business as a whole. This may include, but is not limited to:
- loans including borrowing from other group companies or related undertakings
  - guarantees
  - leases
  - derivative exposures
  - cross default provisions (e.g. a provision in a loan agreement which provides that a default on one loan agreement gives rise to a default on another one)
  - a duty or responsibility that obligates the entity to another, leaving it little or no discretion to avoid settlement. This could include where defaults of a subsidiary or other group members gives rise (either directly or indirectly as a result of an accounting consequence) to a default under loan agreements secured by social housing assets
  - the potential for any impairment particularly in relation to investments in non-core activities

C1.5.6 Registered providers should break down their asset records by business stream, clearly identifying social housing assets. They should identify where assets are encumbered. Similarly, liabilities that may have a negative impact on the social housing assets should be easily identifiable.

C1.5.7 In case of a financial failure, the Regulator expects registered providers to ensure that the key information and records which would be needed should the assets transfer to new owners are readily available at all times. Such information and records will vary between registered providers. However, examples are treasury arrangements, key contracts, title information and restrictions, valuations, stock condition and lender covenants.

Paragraph 1.5.b): expectations relating to stress testing

C1.5.8 Registered providers are expected, as part of their risk management approach, to stress test their plans against a range of different scenarios. The scenarios used will vary according to the size, type and structure of the organisation. However, the Regulator expects that registered providers' approaches will go beyond simple sensitivity testing and include multi-variate analysis that tests against potential serious downside economic and business risks. Registered providers should establish the conditions in which the entity will or could fail, even if planned mitigations and controls are successfully invoked. They should assure themselves that these scenarios are consistent with what they consider to be acceptable levels of risk and their obligations to the Regulator. Stress testing must employ serious and realistic scenarios.

C1.5.9 In designing the stress testing, boards should consider both the long term, cyclical nature of economic factors that impact on the business as well as internal business risks.

C1.5.10 Two potential examples are offered by way of illustration:

- The board of a developing association with a shared ownership and outright sale programme that is raising external debt will need to think about how key variables in the business plan would move during a housing market slowdown or crash. This would include for example, not only what is happening to sale prices and volumes, but also how lenders would be operating in that market, the potential for impairment, what might be happening to variable rate debt and the costs of working capital, other costs of holding the asset such as increased security costs and the movements in nominal and real inflation rates.
- The board of an organisation with significant supported housing business, but little new development, will need to think about what might happen if the registered provider lost key contracts or saw unsustainable price inflation or wage growth that removed margin from the business. The organisation should consider the impact on corporate overheads as well as contract-specific costs.

C1.5.11 The Regulator expects that the approach of all registered providers to assessing, managing and addressing risk will involve developing a range of plausible scenarios

that test the business plan against adverse movements in the operating environment. Doing so will help underpin boards' understanding of where the risks lie and inform their consideration and planning for remedial action if the risks crystallise either singly or in combinations. Registered providers should consider the implications of this stress testing for its existing business, and whether business streams may need to be altered or stopped as a result.

C1.5.12 As long-term businesses, registered providers need to ensure that they can withstand the long-term cycles in the economy and that short term decisions do not constrain their ability to cope with downside risk. This does not prevent registered providers from taking on measured risk to deliver their objectives. It means that when taking on risks, boards will do so conscious of the impact on their business in the round and on their social housing assets, with a strategy in place to protect those assets during the long term.

#### Paragraph 1.6: expectations relating to arrangements with third parties

C1.6.1 The Regulator expects that registered providers will act in good faith to appropriately advance their own interests and those of their tenants. The focus here is on transactions which for example over-price a service received so that the contractor is paid more than market value or where services are given without an appropriate charge being levied.

C1.6.2 For the avoidance of doubt, the Regulator does not intend that transactions undertaken to promote charitable or social objectives nor appropriate dividend payments by for profit providers will be caught by this expectation.

C1.6.3 Where there are conflicts or perceived conflicts of interest, registered providers must clearly set out how these are effectively managed. They must ensure that, for example, parent companies, other entities in a registered provider's group or people who have control or influence over the registered provider due to some other, less formal, relationship, cannot or do not exert influence over them that would have a detrimental effect on the registered provider or its compliance with relevant standards. For example, where there are contractual arrangements in which one or more directors has an interest, the registered provider should ensure that it acts to advance its own interests and any conflicted director should be required to abstain.

C1.6.4 Third parties are any person or body which is not the registered provider. This includes, for example, directors and board members.

#### C1.7 Paragraph 1.7: returns to the Regulator

C1.7.1 Registered providers are required to communicate with the Regulator in an accurate and timely manner. This includes provision of information, for example data returns. The Regulator's requirements for regulatory returns will be clearly articulated to the sector and where appropriate consulted on. It is the responsibility of registered providers to ensure that they submit required data returns in a timely manner and that the information provided is of a good quality.

C1.8 Paragraph 1.8: expectations relating to reporting requirements

- C1.8.1 The Regulator requires that registered providers assure themselves of their compliance with the standard on an annual basis. Boards should also ensure that they assure themselves of their ongoing compliance when taking on significant new risks, for example when undertaking a new type of development activity or entering into a major contract. Registered providers' boards shall certify their compliance in their accounts. When certifying compliance with the Governance and Viability Standard, registered providers shall ensure that they consider compliance with regulatory standards in the round as set out in the required outcomes of the Governance and Financial Viability Standard.

## Section 2

This section applies only to specified classes of registered provider where it is considered that additional controls are needed to protect social housing assets.

### **Para 2.1 only applies to profit making registered providers.**

C2.1 Paragraph 2.1: expectations relating to legal entity

- C2.1.1 Profit making registered providers should undertake activities that relate to the provision of social housing in a ring-fenced entity. This means that they should be separated from any activities that do not relate to the provision of social housing. The Regulator is concerned that any potential recourse to the social housing assets from other non-social housing parts of the business is minimal, and profit making registered providers are expected to manage their affairs in such a way that this is the case. The requirements in paragraph 2.1 of the Standard make this a requirement.
- C2.1.2 A small amount of activity that does not relate to the provision of social housing is permitted within the legal entity to allow for situations where the activity is undertaken for both social and non-social housing reasons, for example, mixed tenure developments. In such circumstances, the registered provider should ensure that the non-social housing activity within the entity does not place social housing assets, activities or its own financial viability at undue risk. The Regulator considers that, where it is necessary, such non-social housing activity is carried out in the legal entity, and the amount of non-social housing activity within the entity should be in the region of no more than 5% of capital or turnover. Registered providers should include within the calculation of the amount of non-social housing activity any agreements entered into by the registered provider which relate to non-social housing activity by others, and which could have a material negative impact on the social housing assets.
- C2.1.3 Boards of profit making registered providers should have oversight of the process of considering what are social housing or non-social housing activities and should approve the final designation. Boards can expect the Regulator to seek assurance

on the robustness of their processes and to challenge if it considers the conclusions they reach are inconsistent with the required outcomes contained in the Standard. The designation of activities should be considered by boards and updated as activities start or stop or when the organisation enters into new ventures.

### Paragraph 2.3

- C2.3 Where a registered provider has a parent who is not registered they should ensure that the social housing assets are not used to support non-social housing activity in other parts of the business to the extent that it may have a material negative impact on the social housing assets or allow material recourse to the social housing assets. Typically the Regulator would expect there to be a non-recourse relationship between the social housing assets and other parts of the business, unless there was a compelling reason to create such a relationship. The Regulator would also expect the risk to be low. Registered providers would not be expected to enter into, for example formal agreements, such as guarantees and cross default clauses in loan agreements or less formal or indirect arrangements such as making investments which lead to impairment or common directorships which, in the event of insolvency, might allow recourse to the social housing assets.

### Paragraphs 2.2 and 2.4: assistance

- C2./4 Paragraphs 2.2 and 2.4 seek to ensure that where a registered provider is part of a group, it can look to other entities within that group for assistance with achieving compliance with regulatory requirements. If a registered provider is part of a corporate group, the Regulator expects that the registered provider will ensure that other entities concerned are aware of the Regulatory requirements placed on the registered provider and understand the implications of them.
- C2.2 Pursuant to paragraph 2.2, in groups where the parent is a registered provider, the parent is required to provide support or assistance to ensure compliance with regulatory standards of the group. This includes ensuring the ongoing viability of the group, and may require assistance to one registered provider from other registered providers.
- C2.4.1 Paragraph 2.4 means if a registered provider has an unregistered parent company, the registered providers must put in place mechanisms to ensure that the parent company concerned will assist the registered provider to comply with regulatory requirements. Also, to ensure that the parent company or another part of the group does not do anything that compromises the registered provider's ability to meet regulatory requirements.
- C2.4.2 In considering whether a mechanism needs to be put in place and what may be most appropriate, a registered provider should consider the risks posed to social housing from the way in which the group of which it is part is organised. The types of mechanism that a registered provider might consider are wide ranging. Figure 1 provides examples of the types of things that such a mechanism might cover. This list is not exhaustive and boards need to consider what is appropriate for their

particular organisations. In some circumstances it may be appropriate for the Regulator to be a party to such arrangements.

Figure 1

Corporate structural arrangements including:

- special purpose vehicles, company groupings etc.
- governance - board relationships and interdependencies
- management- executive independence
- internal control arrangements

Contractual arrangements including:

- intra group agreements
- policies (e.g. sales, project appraisal, asset management)
- transfer pricing

Financing arrangements including:

- arms'-length loan agreements
- structure of funding arrangements - cross guarantees, negative default clauses
- floating charges
- deficits in group members
- security charges
- impairment of investments made by the registered provider

## Annex 1 – legal status of the Code

- D1 This Code is issued by the Homes and Communities Agency, as the Regulator of social housing, under section 195(1) of the Housing & Regeneration Act 2008 (as amended) (the **Act**). It relates to the Governance and Financial Viability Standard set by the Regulator under section 194(1) of the Act (the **Standard**).
- D2 Section 195(2) of the Act provides that the Regulator may have regard to the Code when considering whether the Standard has been met.
- D3 The Code was developed following wide consultation with providers of social housing and other key stakeholders, culminating in a statutory consultation conducted between May and August 2014. The Code and the Standard were formally adopted by a decision of the Regulation Committee of the Homes and Communities Agency on [ ]. They come into effect on [1 April 2015.]

### Application of the Code

- D4 The Code applies to all registered providers who are subject to the Standard (i.e. private registered providers and not local authority providers of social housing). Some paragraphs of this Code relate to parts of the Standard that only apply to specified classes of registered provider. Where this is the case the Code has the same application as the element of the Standard.

### Changes to the Code

- D5 Section 196 of the Act requires that the Regulator consults when issuing, revising or withdrawing a code of practice. Consultations need to be proportionate to the changes that are being proposed. Decisions will be made at the time of proposing any changes about the format, duration and publicity surrounding the required consultation.

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