

**Report to:** Authority  
**Agenda item:** 9.2  
**Date:** 13 December 2012  
**Subject:** BTPA Risk Register  
**Sponsor:** Authority Chief Executive  
**Author:** Authority Finance Director  
**For:** Noting

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## 1. Purpose of paper

- 1.1 To update Members of the Authority on the progress of the BTPA Strategic Risk Register (SRR). The SRR was last submitted to the Audit Committee on 4 December 2012.
- 1.2 The Chief Executive, Authority Finance Director and members of the Authority Senior Management Team (SMT) have met and reviewed the existing operational and strategic risks.

## 2. Work completed

- 2.1 The Authority's SRR is detailed in Appendix A.
- 2.2 The risks were last reviewed and updated by the SMT on the 22 November 2012. The register is reviewed and updated regularly.
- 2.3 No risks have currently been escalated by the BTP for inclusion on the BTPA Strategic Risk Register.
- 2.4 A number of the risks can only be managed to a certain level and the Authority highlights those outside of our control to the DfT. We continue to share our strategic risk registers with the DfT at our bi-monthly meetings.
- 2.5 Following the September 2012 meeting the Authority has raised the issue of EPSAs and the obligation of a new franchise holder to continue with these agreements, with the DfT. The Authority has requested that the DfT classify EPSAs as a key contract during the re-franchising process, so that any potential risk is mitigated. The Authority is awaiting confirmation of this from DfT.

### 3. Table of strategic risk ratings

The following table indicates the current ratings of all Authority strategic risks. Since the last meeting, a new risk ASR60 have been added, this risk relates to the forthcoming triennial valuation of the Pension scheme for Police Officers which is likely to have a deficit.

↑ Probability ↓	Probable and imminent (4)				ASR 60
	Probable (3)			ASR 50 ASR 52	
	Possible (2)		ASR 56		ASR 57
	Remote (1)				
Impact ----->	Minor (1)	Moderate (2)	Significant (3)	Major (4)	
* Risks are now considered ALARP					

All the risk ratings remain unchanged since the last Audit Committee.

The risks can be grouped into the following areas:

- Pensions;
- PSA contracts and charging post 2013/14 and

#### **Pension risks**

(ASR57 and ASR60)

- Investment Risk in relation to the pension scheme - A proposed investment strategy has been put forward to RPMI for consideration, but the timing of any changes to the investments will depend on the financial markets and their affordability.
- Valuation of the Police Officer scheme - This is a new risk to the register, and was highlighted at the September 2012 Audit Committee. The Authority is currently waiting for the request for information to assist in the valuation which is due as at 31 December 2012. It is anticipated that there will be a deficit of approximately £110m.

## **Risks of the post 2013/14 PSA and charging regime**

(ASR50, ASR52 and ASR56)

- Failure to have a signed PSA in place by April 2013 leads to PSA holders being in breach of licence requirement (ASR50) and successful challenges to the new charging regime post 2013/14 lead to a budget deficit – a number of meetings have taken place between BTPA and the DfT concerning this. Also ATOC have met with DfT to raise their concerns. ATOC met with BTPA on 16 November 2012 and will be proposing some amendments to the wording currently contained within the PSA that their members will sign. The Authority have also tasked Weightmans to provide a formal risk assessment in relation to the PSA not being ready by the 31 March 2013 and what the risk would be if it is not signed.
- London Underground Charges and Governance – a draft of the TfL contract was circulated to all Authority members on the 19 October 2012. The latest amended version will be submitted to TfL by the 26 November 2012 so it can be presented to and approved by the TfL Board who are due to meet in December.

## **4. Potential new risks**

- 4.1 The Authority has a potential new risk for the Audit Committee to consider in connection with the West Coast re-franchising. The Authority did not terminate this PSA because the franchise end date was prior to the implementation of the new PSA. Therefore as of early December 2012, West Coast (assuming they stay with the current company) will be still on a fixed proportion PSA. BTPA are waiting to be informed as to which company will be running this franchise from early December, so that appropriate action can be taken in relation to charges and PSAs. As a result of the delay in the award of the West Coast franchise this may lead to delays in the refranchising programme which will in turn change the risk profile on the major groups of increases or decreases in charges. It was agreed that this risk should be added.
- 4.2 The other potential new risk for the Committee to consider is the new Police Regulations that came into effect on the 22 November 2012 for Home Office forces, but not for BTP. Section 26 of the Police Reform Act 2002 requires BTPA and other non Home Office police authorities to have procedures corresponding, or similar to, any of those provided for, by or under Part 2 of the 2002 Act. However, there is an outstanding issue with respect to the ‘appropriate authority’ arrangements, as these have changed in the new Police Regulations whereas BTPA wants to retain the status quo for a number of reasons.

The result being that approval of the new BTP regulations has been delayed whilst the situation is resolved. An addendum to the IPCC agreement has been signed whilst the situation is resolved and the 2008 Regulations continue to have effect. Legal advice is that the current arrangements are satisfactory and defensible. The situation has been communicated to officers and staff through the Area newsletters. The Federation and TSSA have been involved in the process. It was agreed that this did not need to go onto the strategic risk register.

## **5. Recommendation**

The Authority is asked to note the attached strategic risks.

Risk Owner	Action Lead	Original			Status	Risk Description, (Date Raised) and Current Controls	Mitigating Actions, progress and completion date	Estimated Action Closure Date	Estimated Risk Closure Date	Current			Changes to key indicators: Residual Rating (Increased, Unchanged or Reduced) Dates of Last Update and changes to Progress and Rating
		Probability	Impact	Overall						Probability	Impact	Overall	
Finance Director to the BTPA	Finance Director to the BTPA	ASR60			Open	The Pension scheme for Police Officers following the valuation due at the end of 2012 may have a deficit. This would affect both the Employee and Employer future contributions (22/11/12)							
		4	4	16		Monitoring of issue through BTPA Meetings Monitoring through Pensions Committee meetings Regular programme of meetings between BTP/BTPA and Pensions Management/Trustee Actuary Bi-monthly meetings with DfT	<b>Action 1:</b> A paper outlining the timetable and then the current issues will be presented to Authority at the next two meetings <b>Action 2:</b> Review initial valuation with BTP/BTPA and Pensions Management	31-Jan-13 31-May-13	31-Dec-13	4	4	16	<b>Update 22 November 2012:</b> This is a new risk to the register. BTPA are currently awaiting the request for information to support the assumption being made as part of the triennial valuation that will take effect from 31 December 2012. The first draft of the results are due in April 2013. The estimated deficit at 30 June 2012 was approximately £110m. The Pensions Sub-group are currently reviewing what actions BTPA potentially need to taken, bearing in mind both the Hutton and Winsor Report. <b>Risk agreed for inclusion on SRR by BTPA Finance Director</b>
Finance Director to the BTPA	Finance Director to the BTPA	ASR52			Open	Challenges to the new charging mechanism (effective 2013/14) leads to a budget shortfall (8/2/10) Charging sub-group Project control group DfT Engagement throughout process	<b>Action 1:</b> BTPA to work up principles to underpin a possible new model and consult with PSA holders and other stakeholders. <b>Action 2:</b> BTPA to adopt a low risk approach <b>Action 3:</b> BTPA to assess risks and produce a plan to mitigate those risks.	30-Sep-11 30-Sep-11 30-Sep-11					
		2	3	6				30-Jun-13	3	3	9	<b>Update 22 November 2012:</b> BTPA have had two meetings with DfT's lawyers and sponsorship team. Alongside this, meetings have taken place between ATOC and DfT. BTPA met with ATOC on the 19 November, where the wording of the PSA was discussed. As a result of this meeting ATOC have been asked to suggest revised PSA wording which their members would be prepared to agree and sign. The revised wording will be submitted to Andrew for consideration. A meeting is due to take place between Weightmans and DfT's lawyers to agree the wording of the PSA. The Authority has also tasked Weightmans to provide some formal advice on what the risk would be if the new PSA is not agreed by 31 March 2013, and what the risk would be if the new PSA is not signed. Weightmans are also consulting with John Ross QC on the consultation process that have been undertaken. <b>Update 6 September 2012:</b> BTPA have had a meeting with ATOC and have received their feedback. The next steps are to review all the feedback that has been received, and to submit the new PSA to DfT by the end of September. <b>Update 18 July 2012:</b> BTPA are aware that there is a potential that some operators may challenge this. BTPA have not yet received any formal notification. <b>Update 3 May 2012:</b> The current wording of the new PSA, if agreed will not lead to a budget deficit as per clause 5.5(d), therefore if all PSA holders sign the budget shortfall cannot occur. If an arbitration is mounted by the PSA holders, any shortfall agreed by the arbitrator would be distributed across the other PSA holders as per clause 5.5(d) <b>Update 7 March 2012:</b> See update above for ASR50 <b>Update 8 February 2012:</b> Meetings with at Group and Managing Director level taking place to provide an overview of the model. These meeting will assist with future planning. <b>Update 8 November 2011:</b> The risk of challenge is reduced by the retention of the Matrix model and the option of tapering the transfer to the Matrix as franchises expire. The settlement agreement with Arriva Trains expires on 31 March 2013 which increases the risk of challenge to the Matrix model post 2013. <b>Risk agreed for inclusion on SRR by BTPA Finance Director</b>	
Chief Executive to the BTPA	Chief Executive to the BTPA	ASR50			Open	Failure of BTPA to have signed PSA in place by 1 April 2013 leads to PSA holders being in breach of their licence requirements (8/2/10) Draft PSA submitted to DfT Bi-monthly meetings with DfT	<b>Action 1:</b> Share agreement with PSA rail industry <b>Action 2:</b> BTPA to agree draft with DfT.	31-Mar-12 31-Dec-12	31-Mar-13	3	3	9	<b>Update 22 November 2012:</b> The Authority has tasked Weightmans to provide some formal advice on what the risk would be if the new PSA is not agreed by 31 March 2013, and what the risk would be if the new PSA is not signed. <b>Update 6 September 2012:</b> BTPA have had a meeting with ATOC and have received their feedback. The next steps are to review all the feedback that has been received, and to submit the new PSA to DfT by the end of September. <b>Update 18 July 2012:</b> The new PSA has been consulted on, and the comments received have been taken into account and the PSA amended where appropriate. The new PSA will be signed off by the Authority out of Committee and submitted to the DfT by the end of September for sign off. A meeting between Liz Pike, Andrew Figgures and Weightmans will take place to go through the amendments. Once the new PSA has been signed the potential risk will be the possibility of an arbitration based on the onus nature of the contract. The Authority will see QC advice on this. <b>Update 3 May 2012:</b> Written responses have been received from all PSA holders. The main issues highlighted by the PSA holders have been highlighted to both the ATOC and DfT. <b>Update 7 March 2012:</b> Written responses received from ATOC, ATW and Southeastern. A response from Network Rail is expected. The responses are being reviewed. <b>Update 8 February 2012:</b> ATOC is co-ordinating a collective response from its members. Letters have been sent to the TOCs who have not yet been seen, and met. <b>Update 8 November 2011:</b> Preliminary meeting held between DfT sponsorship team, lawyers and BTPA on 11 October. Minor revisions were discussed and a revised PSA was submitted. <b>Risk agreed for inclusion on SRR by BTPA Finance Director</b>
		1	3	3									
Finance Director to the BTPA	Finance Director to the BTPA	ASR57			Open	Investment Risk in relation to the Pension Scheme - The profile of the investments held for the police officers is not matched to the profile of Membership (1/03/11) Pensions sub group with 4 members on it, established in February 2011 to review the investments and Governance of the scheme. Quarterly review of investments by Authority Finance Director and Director of Finance & Corporate Services management committee Any changes in strategy proposed by the Trustee must be agreed by the Employer	<b>Action 1:</b> Pension subgroup reviewing the investment strategy with professional support from Punter Southall <b>Action 2:</b> Pension subgroup reviewing the Governance around investments and management of the scheme. <b>Action 3:</b> Annual updates on valuation in between 3 year formal valuation <b>Action 4:</b> Additional focus on pensions at Authority meetings	30-Sep-11 31-Mar-12 31-Dec-11	31-Dec-12	2	4	8	<b>Update 22 November 2012:</b> The investment strategy that was agreed by the Authority has been proposed to RPMI, and the Authority is awaiting feedback. The timing of implementing any changes will be dependant upon the financial markets and will need to consider the affordability of changing the investments. The 2012 Police Officer valuation will also consider the investment strategy. <b>Update 6 September 2012:</b> A paper will be submitted to the next Pension sub-group for discussion. A meeting is being arranged to between Liz Pike and Howard Collins to go through the possible options for BTP in light of the Hutton report. <b>Update 18 July 2012:</b> Punter Southall are doing an interim valuation as at the end of June, but this is yet to be presented to the Trustee. Once this has been received, along with the potential impact of the Hutton report the options will be discussed at the September Pensions sub group meeting. <b>Update 3 May 2012:</b> A meeting has been held with RPMI where the timing strategy was discussed. This will be changed once the unauthorised pensions situation have been satisfactory completed. The estimated closure date has been amended from 31 March 2012 to December 2012 to allow time for the unauthorised pension <b>Update 12 March 2012:</b> Meeting held with RPMI / Punter Southall to discuss timing and process of the move, movement out of equities has started. <b>Update 8 November 2011:</b> Trustee has agreed the proposals submitted on investment strategy subject to there being no adverse affect on the joint contribution rate to the scheme. Punter Southall and the BTPA Exec continue discussions with RPMI. The timing of any move will need to be considered very carefully. The governance review will be presented once the investment strategy has been actioned. <b>Risk agreed for inclusion on SRR by BTPA Finance Director</b>
		2	4	8									
Chief Executive	Finance Director to the BTPA	ASR56			Open	LU Ltd Choose to reduce the policing level required from the BTPA or removes it completely leading to a budget deficit and a surplus of resources. The contractual relationship between LU and BTPA is not based in statute and policing services might be, or be claimed to be provided more efficiently and effectively by another Force. This could lead to a change in policing requirement which is more rapid than the BTP/BTPA's ability to respond to it. Reviewing the E/PSA and ensuring implementation or processes and that processes are adequate	<b>Action 1:</b> To determine the contractual relationship between TFL and the BTPA and assess the implications of that relationship.	31-Mar-12					
													<b>Update 22 November 2012:</b> The latest draft of the PSA dated the 15 November has been discussed and the proposed wording will be sent to TFL by 26 November, so that the contract can be presented to the TFL Board in December for approval. The updated draft TFL PSA was circulated to Members of the Authority on the 19 October 2012. <b>Update 6 September 2012:</b> A meeting is due on the 11 September with TFL and the Lawyers to agree the PSA except for the insurance element. BTP are due to meet their insurance provider to determine what the additional costs would be. A copy of the PSA will be circulated to members for approval excluding the insurance clauses. <b>Update 18 July 2012:</b> The contract framework and the last few elements are being finalised. It is expected that this will be completed by 30 September 2012. There is a potential risk of delay in seeking DfT Secretary of State agreement, and a potential delay in relation to the wording concerning insurance.

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		Probability	Impact	Overall						Probability	Impact	Overall	
to the BTPA	Director to the BTPA	2	3	6		Exposing the calculation of LU overhead to the Finance Group  To establish the ownership and control of assets and equipment		30-Sep-12	2	2	4	<p><b>Update 3 May 2012:</b> Further meeting held with TfL on 27 April 2012 where a couple of issues were raised and these are currently being clarified. The completion date of 30 June is still achievable subject to any further updated from TfL.</p> <p><b>Update 8 February 2012:</b></p> <p><b>Update 12 March 2012:</b> Draft Agreement in negotiation. Two meetings held with TfL and lawyers. Draft to be presented to the Authority on 29 March 2012.</p> <p><b>Update 8 November 2011:</b> Internal Audit report to be reviewed by the Chief Exec and Authority FD by Mid Nov and findings reported to Audit Committee in mid Dec. BTP have been asked to report on the cost of policing L Area assuming a flat nominal budget. Work has been requested by the Finance Group to ascertain the risks if the arrangements for EPSAs are terminated by TfL.</p> <p><b>Risk agreed for inclusion on SRR by BTPA Finance Director</b></p>	