

**RELEVANT LEGAL & COMPANY GOVERNANCE IMPLICATIONS IN
RELATION TO THE PROPOSALS OUTLINED IN THE REPORT FROM
CITY OF YORK TRADING LIMITED (“CYT”) TO THE COUNCIL OF
THE CITY OF YORK (“CYC” or the “COUNCIL”) SHAREHOLDER
COMMITTEE DATED 19TH DECEMBER 2023**

1. Article 12 (Shareholder Committee) of the CYC Constitution

- [Art 12 \(Shareholder Committee\) of the Constitution](#) states that:
 - Any other Meetings of the Shareholder Committee (outside of the usual programme) will be called as and when required to deal with company business. (2.2)
 - Minutes (from the last meeting), Notices and Agenda of Shareholder Committee Meetings shall be sent to Shareholder Committee members **at least 5 working days prior to the Meeting**. (2.3)
 - Subject to any relevant overriding provisions contained in a company’s Shareholder Agreement or within a company’s Articles of Association, the Shareholder Committee is established to undertake all the following functions of the Council as a shareholder under the Companies Act 2006, including (but not limited to):
 - approving the **acquisition of shares in another company**;
 - approving the **establishment of subsidiary companies**; and
 - approving **the appointment or dismissal of any company Directors (including the Chair), which requires Shareholder consent** under the Articles and/or Shareholder Agreement of the company (see 5.2 below however).

(4.1)

- The Shareholder Committee has the power within its terms of reference to exercise all the Council's powers arising from the Council's role as the shareholder and owner of the company, ***other than the following decisions, which are reserved exclusively to the (CYC) Executive:***
 - changes to company governance (e.g., including amending a company's Articles of Association or its Shareholder Agreement);
 - agreements to any amalgamation, merger, division, joint venture, take-over, profit sharing, re-registration from private to public (or vice-versa), re-registration from limited to unlimited (or vice versa), compromise arrangements, or similar arrangements, subject to consultation with the Council's Chief Finance (s151) Officer;
 - approval of any disposals of assets valued over £500,000, subject to the company's Articles of Association;
 - approval of any grants and/or loans in excess of £500,000;
 - approving borrowing in excess of £100,000;
 - entering, amending, or terminating any agreements which create a potential liability for the company in excess of £500,000; and
 - approving steps to wind up a company.

(5.1)

- For the avoidance of any doubt, the Shareholder Committee has delegated authority to exercise all the Council's powers arising from the Council's role as the Shareholder and owner

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of the company on all matters relating to the appointment, dismissal, the terms and conditions, and entering into contracts with Non-Council Directors insofar as such matters require Shareholder consent under the Articles and/or Shareholder Agreement of the company (5.2).

- The following decisions may be taken under delegated powers of the Chief Operating Officer (Chief Executive) of the Council:
 - approving changes to the location in which the company works;
 - approving alterations to company's name or registered office;
 - matters relating to the employees or agents of the company other than its senior management team;
 - where required giving any further specific approval to a matter provided for within the approved business plan;
 - approving changes to accounting arrangements; and
 - entering, terminating or amending any agreements that create a potential liability for the company not exceeding £250,000.

(5.3)

- Anything not covered under 4.1, 5.1, 5.2, and 5.3 of Art. 12, which does not require shareholder consent under the Articles or Shareholder Agreement of the Company, doesn't need to be referred to Shareholder Committee.

2. Shareholders Agreement dated 1st April 2021 between (1) CYC, and (2) CYT

- Under the **Shareholder Agreement** for CYT:

- The minimum number of Directors shall be 6, consisting of at least:
 - 3 x elected Members of the Council, appointed by the Council as Non-Executive Directors (the “**Council Non-Executive Directors**”);
 - 2 x Non-Executive Directors who are neither employees of the Company, nor Members or Officers of the Council (the “**Independent Non-Executive Directors**”); and
 - the Managing Director of the Company.

(Cl. 7.1).

- The maximum number of Directors shall be 10, consisting of not more than 4 x Executive Directors (including the Managing Director) and 6 x Non-Executive Directors, no more than 3 of whom shall be elected Members of the Council (Cl. 7.2).
- The quorum for Board meetings shall be 3 x Directors, including at least 1 x Non-Executive Director (Cl. 7.4).
- The Company will advertise for the recruitment and appointment of Independent Non-Executive Directors and Executive Directors, unless appointed by way of a restructure. Where appropriate, the Board will then create a shortlist of and interview candidates. ***The Board will submit its final recommendations to Shareholder Committee for approval before the formal appointment of any such Directors by way of a formal Board resolution*** (Cl. 7.5).
- The Company shall procure that ***the Directors shall appoint the Council Non-Executive Directors recommended by the Shareholder Committee, and the Shareholder Committee shall recommend for appointment a replacement Council Non-Executive Director*** should the number of Council Non-Executive

Directors fall below the number specified in Clause 7.1 (Cl. 7.6).

- The Company shall procure that ***the Directors shall appoint the Council Non-Executive Director recommended by the Shareholder Committee as Chairman of the Board*** (Cl. 7.7).
- The Company ***shall not remove or purport to remove any Director as a Director of the Company or any of its subsidiaries without the prior written consent of the Shareholder Committee*** (Cl. 7.8).
- The role of the Shareholder Committee shall not be operational. The Shareholder Committee shall (*inter-alia*) exercise the functions of the Council in relation to the giving of Shareholder consent for the matters set out in ***paragraph 1.2 of Schedule 2*** (of the Shareholder Agreement), ***other than consent required by the following paragraphs under Schedule 2 for which the approval of the Council's Executive is required:***
 - paragraph 1.2.3 (allotment of further share capital);
 - **paragraph 1.2.7 (formation of a subsidiary);**
 - paragraph 1.2.8 (joint ventures);
 - paragraph 1.2.10 (amendments to the Articles);
 - paragraph 1.2.26 (winding up etc.);
 - paragraph 1.2.32 (listing of share capital); and
 - paragraph 1.2.34 (negotiations re sale etc.).

(Cl. 8.3.5).

- The following paragraphs of Schedule 2 of the Shareholder Agreement make it clear that ***CYT shall not, (save as set out in or as required by this Agreement) without the prior written consent of the Council and/or approval of the Shareholder Committee*** carry out any of the matters:
 - Paragraph 1.2.7 - ***the formation of any subsidiary*** undertaking (see Cl. 8.3.5 above);

- Paragraph 1.2.9 - ***acquire any interest in the share capital or instruments convertible into share capital of any other company*** or body corporate;
- Paragraph 1.2.18 - ***acquiring or making any investment in another company*** or business or ***incorporate any subsidiary***;
- Paragraph 1.2.25 - ***the appointment or dismissal of any Executive Director, or the Council Non-Executive Director who acts as Chairman*** of the Board;
- Paragraph 1.2.29 - ***acquiring the assets of any other business entity***;

3. Articles of Association of CYT adopted on 17th January 2012

- Under the **Articles of Association** for CYT:
 - CYC, as sole Shareholder, may ***by Special (Written) Resolution direct the Directors of CYT to take, or refrain from taking, a specified action.*** (5.1).
 - No such Special Resolution invalidates anything which the Directors have done before the passing of that resolution. (5.2).
 - CYC as sole Shareholder, may from time to time and at any time, ***appoint any person or persons as a Director or Directors, and remove from office any Director (regardless of how they were appointed) ... by notice in writing to the Company, signed by/of behalf of CYC,*** and shall take effect once delivered to CYT's registered office. (20.4).