

ARTICLE 12 – SHAREHOLDER COMMITTEE

1 Purpose

- 1.1 The Shareholder Committee has been established by the Executive specifically to discharge the shareholder functions of the Council, in relation to those companies of which the Council is a shareholder.
- 1.2 The shareholder in this context is always the City of York Council, not the members of the Shareholder Committee themselves, or any Directors appointed to represent the Council on the boards of these companies.
- 1.3 The Shareholder Committee does not have day-to-day operational control over any of the companies of which the Council is a shareholder. The decisions that the Shareholder Committee is required to make in relation to a company are set out in the Shareholder Committee terms of reference, which is set out below and the Shareholder Agreement for each company.
- 1.4 All decisions regarding the day-to-day operation of each company are the responsibility of the Board of Directors of each company.

Each Board of Directors will include:

- a) “**Council Directors**” who for the purposes of this Article 12 are the non-executive (i.e., non-salaried) directors appointed by the Shareholder Committee (in conjunction with the Council’s Staffing Matters & Urgency Committee) in accordance with the Articles and/or Shareholder Agreement of the Company, to represent the Council on the Board. This category will often (but not always) include the Chair of the Board; and
- b) “**Non-Council Directors**” who for the purposes of this Article 12 include the executive (i.e., salaried) directors and the independent non-executive directors appointed by the Board. This category will include the Managing Director of the company.

In addition, the day-to-day liaison with the companies will be between the relevant client service of the Council and the Managing Director of each company.

1.5 There are two classifications of companies, which the Shareholder Committee regularly deals with:

1.5.1 “*Teckal Companies*” – these are companies that meet all of the following three criteria:

- a) There is no direct private capital participation in the company; in other words, either:
 - i. the Council is the sole shareholder in the company; or
 - ii. the shareholders are made up exclusively of public sector bodies, including the Council.
- b) The Council (either acting as the sole shareholder, or together with the other public sector owners) exercises effective control over the company’s affairs; in other words, the same as the relationship between the Council (and the other public sector owners where applicable), and one of their internal directorates.
- c) The company must be inward not outward focussed; in other words, at least 80% of the activity of the company – that is, over 80% of its turnover – must be for the Council, and where applicable its other public sector owners.

1.5.2 “*Non-Teckal Companies*” – these are companies that fall outside the definition of a Teckal Company, as summarised above.

Due to their very nature, Teckal Companies require a much greater deal of oversight from the Shareholder Committee than their Non-Teckal counterparts do.

2 Meetings of the Shareholder Committee

- 2.1 The Shareholder Committee will hold the following Meetings each year, each for the following purpose:

Purpose of Meeting	Frequency of Meeting	Does this apply to Teckal Companies?	Does this apply to Non-Teckal Companies?
To receive annual reports and annual accounts from companies	Once per annum	Yes	Yes
Performance Monitoring (subject to any alternative monitoring requirements set out within any Shareholder Agreement or contracts for goods/services/ works with the company)	Twice per annum, as a minimum.	Yes	Yes (once per annum)

- 2.2 Any other Meetings of the Shareholder Committee will be called as and when required to deal with company business.
- 2.3 Minutes, Notices and Agenda of Shareholder Committee Meetings shall be sent to Shareholder Committee members at least 5 working days prior to the Meeting.

3 Composition of the Shareholder Committee

- 3.1 The Shareholder Committee is a Committee of the Executive, comprised of Executive Members appointed to it by the Executive. These individuals will be appointed to the Shareholder Committee

in accordance with the Council Procedure Rules set out within the Constitution. Only members of the Executive who are not already appointed as directors on the boards of any companies in which the Council is a shareholder or the sole shareholder will be eligible to sit on the Shareholder Committee.

- 3.2 Only members of the Executive may sit and vote on any business laid before the Shareholder Committee.
- 3.3 A Chair and Vice-Chair will be appointed in accordance with the Council Procedure Rules set out within the Constitution.
- 3.4 A quorum of two and a maximum number of two Executive Members will be appointed to the Shareholder Committee. For the avoidance of any doubt, only members of the Executive who are not already appointed as directors on the boards of any companies in which the Council is a shareholder or the sole shareholder will be eligible to sit on the Shareholder Committee.
- 3.5 Substitutes, who must also be Executive Members, may be permitted at the discretion of the Chair.
- 3.6 In line with the arrangements for Executive meetings, the Leaders of each of the opposition groups, or their nominated substitute, will be invited to attend Meetings and be given full rights to participate in Meetings, although they will not be entitled to vote on any business laid before the Shareholder Committee.
- 3.7 A co-opted independent person will also be allowed to attend in the same capacity as set out above for opposition group Leaders or the substitutes, they too will not be entitled to vote on any business laid before the Shareholder Committee. The role of the co-opted independent person will be purely to provide a wider range of commercial and governance expertise to the Shareholder Committee.
- 3.8 The Chief Operating Officer, the Section 151 Officer and the Monitoring Officer (or their Deputies) will be in attendance as and when necessary unless their attendance is in the capacity as a

Link Officer. A legal advisor from the Council's Legal Services team will attend as an advisor to the Shareholder Committee.

- 3.9 A CYC client officer ('Link Officer') will be nominated for each company and will undertake the activities set out in Annex 1. The Link Officer in relation to each company will attend meetings of the Shareholder Committee.
- 3.10 The Chair of the Shareholder Committee may from time-to-time ask other Officers to attend Meetings of the Shareholder Committee to present and provide expert advice on specific issues to the rest of the Committee. The Chair and/or those Officers may invite additional advisors for this purpose. Again, if any such officers and/or advisors are asked to attend a meeting of the Shareholder Committee, they shall not be entitled to vote on any business laid before the Shareholder Committee.
- 3.11 The Executive Procedure Rules as at Appendix 4 of this Constitution apply to procedures and decision taking at meetings of the Shareholder Committee.

4 Terms of Reference

- 4.1 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 of the following functions of the Council as a shareholder under the Companies Act 2006 by:

	Function	Teckal Companies	Non-Teckal Companies
a)	acting as the owner or joint owner of the Council's companies;	✓	✓
b)	approving or making amendments to strategic or	✓	

	Function	Teckal Companies	Non-Teckal Companies
	business plans;		
c)	monitoring performance and financial delivery against strategic business plans;	✓	
d)	approving the acquisition of shares in another company;	✓	
e)	approving the establishment of subsidiary companies;	✓	
f)	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;	✓	✓ In so far as it requires a resolution of the Council and any other shareholders of the company.
g)	determining and approving all matters relating to terms and conditions of company Directors which require Shareholder consent under the Articles and/or Shareholder Agreement of the company;	✓	✓ In so far as it requires a resolution of the Council and any other shareholders of the company.
h)	determining and approving all matters relating to the entering of any contracts with company Directors, other than as permitted under any service agreement the company may have with the Council;	✓	✓

	Function	Teckal Companies	Non-Teckal Companies
i)	determining and approving all matters relating to the employment of the senior management team of the company which require Shareholder consent under the Articles and/or Shareholder Agreement of the company;	✓	
j)	approving changes to share capital and the admission of additional shareholders;	✓	<p>✓</p> <p>In so far as that it relates to:</p> <ul style="list-style-type: none">• any instruction to the Directors to allot shares;• any increase in the authorised share capital of the company;• any reduction in the authorised share capital of the company;• any sub-division, consolidation, or re-denomination shares;• variation of class rights attached to shares;

	Function	Teckal Companies	Non-Teckal Companies
			<ul style="list-style-type: none"> any purchase of shares by the company itself; any alteration to the company's Articles of association relating to pre-emption rights, or relating to the shares of the company; or any disapplication of pre-emption rights, <p>or any other matter that requires a resolution of the Council and any other shareholders of the company by law or otherwise.</p>
k)	approving disposals of assets valued under £500,000;	✓	<p>✓</p> <p>In so far as it relates to a Substantial Property Transaction (as defined in the Companies Act 2006) with one of the Directors (or a connected person of that Director), and therefore requires a</p>

	Function	Teckal Companies	Non-Teckal Companies
			resolution of the Council and the other members of the company.
l)	approving borrowing up to £100,000;	✓	<p>✓</p> <p>In so far as the financial assistance being sought is:</p> <ul style="list-style-type: none">• by one of the Directors, or• by persons connected with one of the Directors, or• by the company to purchase its own shares, <p>and therefore requires a resolution of the Council and any other shareholders of the company.</p>
m)	approving and making grants or loans up to £500,000 other than by way of normal trade credit, subject to approval from the Council's Chief Financial Officer in line with the Council's Financial Regulations, and taking appropriate legal advice on any requirements under the UK	✓	<p>✓</p> <p>In so far as the financial assistance being sought is:</p> <ul style="list-style-type: none">• by one of the Directors, or

	Function	Teckal Companies	Non-Teckal Companies
	Subsidy Control Regime and necessary grant or loan terms and conditions, and the usual risk assessments;		<ul style="list-style-type: none">• by persons connected with one of the Directors, or• by the company to purchase its own shares, and therefore requires a resolution of the Council and any other shareholders of the company.
n)	entering, amending or terminating any agreements which create a potential liability for the company in excess of £250,000 up to £500,000;	✓	
o)	making changes to the nature of the company's business;	✓	✓ In so far as that it relates to: <ul style="list-style-type: none">• amendments to the company's Articles of Association or Shareholders Agreement;• re-registering the company from private to public (or vice versa) or limited to unlimited (or vice versa).

	Function	Teckal Companies	Non-Teckal Companies
p)	approving a decision which could otherwise be taken by a Council Director, but which would, if being taken by the Council, amount to a key decision;	✓	
q)	approving any dividends requiring Council consent;	✓	✓
r)	exercising any powers to issue instructions to company directors;	✓	✓ In so far as it requires a resolution of the Council and any other shareholders of the company.
s)	exercising decision making over reserved matters set out in a company's Shareholder Agreement;	✓	✓
t)	making recommendations to Executive for any investment in/asset transfers to or lending to companies;	✓	✓
u)	delegating specific functions to Officers of the Council to increase commercial flexibility.	✓	

Any advice required by Shareholder Committee Members in relation to the above Terms of Reference and the impact of any provisions within a company's Articles of Association or any

existing Shareholder Agreements must be sought from the Council's Legal Services Department.

5 Delegated powers

5.1 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 Executive:

- a) changes to company governance e.g. including amending a company's Articles of Association or its Shareholder Agreement;
- b) 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 Officer;
- c) approval of any disposals of assets valued over £500,000, subject to the company's Articles of Association;
- d) approval of any grants and/or loans in excess of £500,000;
- e) approving borrowing in excess of £100,000;
- f) entering, amending or terminating any agreements which create a potential liability for the company in excess of £500,000; and
- g) approving steps to wind up a company.

5.2 The following decisions are reserved exclusively to the Staffing Matters and Urgency Committee:

- a) approving the appointment or dismissal of Council Directors (including (where applicable) the Chair);
- b) determining and approving all matters relating to terms and conditions of Council Directors that require Shareholder consent under the Articles and/or Shareholder Agreement of the company; and
- c) determining and approving all matters relating to the entering of any contracts with Council Directors, other than as permitted under any service agreement the company may have with the Council.

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 of the company on all matters relating to either:

- a) the appointment, dismissal, the terms and conditions, and entering into contracts with Non-Council Directors; and
- b) determining and approving all matters relating to the senior management of the company,

insofar as such matters require Shareholder consent under the Articles and/or Shareholder Agreement of the company.

5.3 The following decisions may be taken under delegated powers of the Chief Operating Officer:

- a) approving changes to the location in which the company works;
- b) approving alterations to company's name or registered office;
- c) matters relating to the employees or agents of the company other than its senior management team;
- d) where required giving any further specific approval to a matter provided for within the approved business plan;

- e) approving changes to accounting arrangements; and
- f) entering, terminating or amending any agreements that create a potential liability for the company not exceeding £250,000.

ANNEX 1: Link Officers

1. Each company shall have a nominated CYC client officer ('Link Officer') who will engage monthly (or more frequently as required) with that company to ensure that Shareholder Committee is provided with:
 - a) Updates in respect of company performance, market conditions and assurance
 - b) Details of strategic plans, funding and other requirements
 - c) Sufficient information to evaluate any new business proposals
2. The Link Officers will review reports from their nominated company before they are submitted to the Shareholder Committee, liaising with finance, legal or other colleagues as necessary maintain joint risk registers as required and ensure Shareholder Committee is provided with the level of detail and analysis required to fulfil its role.
3. Link Officers are required to:
 - a) Actively communicate and collaborate with the company and CYC officers as required, including the Director of Governance, Chief Finance Officer and Chief Operating Officer or their nominated representatives.
 - b) Build and maintain effective and transparent relationships with all parties.
 - c) Actively work to promote and improve good working relationships between the Council and its companies.
 - d) Take appropriate action to avoid conflicts of interest and, where a potential conflict is identified, to assist in managing any such conflict.
 - e) Ensure that the company has the appropriate level of support and challenge, including support to deliver agreed objectives and challenge to minimise or mitigate any risk to the Council. The appropriate balance of challenge and support will depend on the company objectives, the nature of the relationship with the company (i.e. whether wholly or partly owned), performance and risks or opportunities.
 - f) Manage and maintain effective relationships between shareholder representatives and the company.

- g) Appropriately feedback any concerns of the Council to the company and vice versa.
- h) Review board decisions and actions and identify any concerns in relation to directors potentially exceeding the remit of their powers.
- i) Flag any issues and risks as quickly as possible.