

**SCHEDULE 1 – PROPOSED CORPORATE STRUCTURE**

ISSUE	COMMENT
<b>SHAREHOLDERS' AGREEMENT AND ARTICLES OF ASSOCIATION</b>	
Principal documents	<p>The Council and each Company will enter into the Shareholders' Agreement. New Companies created after the Agreement is initially executed will enter into the Shareholders' Agreement and be bound by its terms by executing a deed of adherence.</p> <p>Each Company will have Articles of Association. As far as possible these should be identical, although there may be some differences between (a) Teckal Cos and Trade Cos, or (b) Companies established for specific purposes which require slightly different governance provisions.</p>
Nature of Teckal Co business	<p>A given Teckal Co will provide:</p> <ol style="list-style-type: none"> <li>a. services to the Council and other legal persons controlled by the Council (within the meaning of regulation 12 of the Public Contracts Regulations 2015) in accordance with any business plan then in force and on terms agreed between the Teckal Co and the Council</li> <li>b. services to any person not otherwise covered by (a) above in accordance with any business plan then in force and on terms agreed between the Teckal Co and that person</li> <li>c. such other services as the Council may from time to time determine and on terms agreed between the Teckal Co and the relevant counterparty/ies <sup>1</sup></li> </ol>
Nature of Trade Co business	<p>A given Trade Co will provide:</p> <ol style="list-style-type: none"> <li>a. services to the Council in accordance with any business plan then in force and on terms agreed between the Trade Co and the Council</li> <li>b. services to any person not otherwise covered by (a) above in accordance with any business plan then in force and on terms agreed between the Trade Co and that person</li> <li>c. such other services as the Council may from time to time determine and on terms agreed between the Trade Co and the relevant counterparty/ies</li> </ol>
Business plans and information flows	<p>Each Teckal Co and Trade Co will prepare a business plan for approval by the Council, to include:</p> <ul style="list-style-type: none"> <li>• an annual operating revenue plan and capital expenditure requirements (including funding source)</li> <li>• a balance sheet forecast</li> <li>• a minimum [5] year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the respective company and a list of key risks of the respective company's business</li> <li>• a plan for the use of any surpluses made in each Financial Year including the making of any distribution of profit subject to the provisions of Companies Act 2006</li> <li>• an annual profit and loss account</li> </ul>

<sup>1</sup> As part of the compliance requirements with the Teckal exemption, a Teckal Co will need to be governed and its business pursued in a manner which ensures that it (a) is and remains controlled (both by way of ultimate membership of the Teckal Co and decisive influence over both its strategic objectives and significant decisions) by the Council; (b) carries out the essential part of its activities for the Council and other legal persons controlled by the Council; (c) carries out those activities in furtherance of the Council's public service tasks; and (d) is not market orientated.

ISSUE	COMMENT
	<ul style="list-style-type: none"> <li>any other content as requested in order to approve such business plan</li> </ul> <p>We would recommend the business plan covers more than one financial year and is reviewed and updated at the start of each financial year.</p> <p>Each Company will deliver to the Council:</p> <ul style="list-style-type: none"> <li>draft annual accounts in accordance with the timetable as agreed with the Council</li> <li>final audited annual accounts by 30 June in each financial year</li> <li>minutes of all Board meetings within 20 business days after the relevant Board meeting to which they relate</li> <li>all information required to be provided pursuant to other contractual commitments, within the timescales agreed</li> <li>any other information reasonably required by the Council from time to time</li> </ul> <p>The Council (and its authorised representatives) will be able to request and inspect any documents or information during working hours on reasonable notice.</p>
Member/owner	<p>The Council will be the sole member of Hold Co and Hold Co will be the sole member of each of remaining Companies. This is subject to tax advice.</p> <p>The Council will exercise its rights (as ultimate owner or contract counterparty) through one or more authorised representatives. We would not recommend naming the representative in the Shareholders' Agreement, although the Council may wish for a role (or the person who would act as an authorised representative) to be specified.</p>
Board – size and composition	<p><b>Number and composition</b> – to be discussed. Our preference would be for a number large enough to promote robust debate and small enough to be manageable (e.g. between 4 and 8).</p> <p>The Board could comprise executive directors, non-executive directors (Council nominees or externally sourced NEDs) and/or seconded directors (i.e. Council employees) in the following proportions:</p> <ul style="list-style-type: none"> <li>a Board with NEDs only</li> <li>unbalanced Board with greater proportion of NEDs</li> <li>unbalanced Board with greater proportion of executive directors</li> <li>balanced Board with an equal split between executive and non-executive directors</li> </ul> <p>What matters is ensuring that the size and composition of the Board promotes the type of business undertaken by the Company and that the persons appointed to the role of director understand the company's obligations. In addition, Teckal Cos must show that the Council exercises sufficient control over Board decision-making processes.</p> <p><b>Council appointment rights</b> – the Council will have the right by notice in writing to appoint one or more directors to each Company Board and, depending on the composition, may appoint a majority of directors. Any director appointed by the Council may also be removed by the Council at any time. Company directors have a duty under the Companies Act 2006 to avoid situations where their interests do or may conflict with those of the company. Given the duties of elected members and Council officers in relation to conflicts of interests, careful thought is needed as to who should act as the Council's appointees on any given board. We would recommend in the first instance considering officers (rather than elected members) for directorships.</p> <p><b>Observers</b> – senior Council officers (not themselves directors) would also have the right to receive notice of and attend any Company Board and act as observers.</p> <p><b>Company secretary</b> – private companies are not required to appoint a company</p>

ISSUE	COMMENT
	secretary but may do so.
Board - decision-making	<p>The Shareholders' Agreement would contain a list of "reserved matters" requiring the prior consent of the Council. A proforma list of reserved matters is contained in this Schedule, for consideration by the Council. This will be one of the ways in which Council control over Teckal Cos will be evidenced for Teckal compliance purposes.</p> <p>Apart from the reserved matters, decisions which the Council (as member) is required to approve under the Companies Act 2006 and any matters which the Council directs a company's board to undertake (or not undertake), the day to day running of each Company will be left to the directors.</p> <p>The quorum at any Board meeting requires at least one non-executive director appointed by the Council to be present.</p> <p>Each director present and entitled to vote on a matter will have one vote. The chairman (who may be a fixed term or ad hoc appointment) will not have a casting vote.</p> <p>If there are more executive directors appointed than (Council-appointed) non-executive directors, then if those non-executive directors vote the same way, the matter becomes a reserved matter which can only proceed if the Council approves it.</p> <p>If the (Council-appointed) non-executive directors notify the Board that a particular matter (which is not otherwise a reserved matter) is sufficiently important to the Council, then the matter becomes a reserved matter which can only proceed if the Council approves it.</p>
Dispute resolution	Disputes would be dealt with by any means permitted by a particular agreement between a Company and the Council or, in the absence of a DRP within an agreement, by escalation to senior representatives and mediation.
Finance / profits	<p>Teckal Cos will be primarily funded through payments received from the Council for delivery of services. Trade Cos will be funded primarily through receipts from third party trading. Debt funding may only be procured with Council approval.</p> <p>Profits (to the extent distributable) will only be distributed in accordance with the business plan and Council approval.</p>
Issues of new shares / transfers of shares	<p>No issue or transfer of shares permitted without Council approval.</p> <p>Any new company will be required to adhere to the terms of the Shareholders' Agreement.</p>
<b>RESOURCING AGREEMENT</b>	
Resources to be supplied to the group companies	<p>The Council will need to consider the resource requirements for each Company which may include:</p> <ul style="list-style-type: none"> <li>• support services</li> <li>• the use of premises – which would be licenced to each company for the duration of the Resourcing Agreement</li> <li>• equipment, materials and consumables – consumables would be sold to each company. Equipment would be licenced to each company for the duration of the Resourcing Agreement</li> <li>• staff – which could be seconded into a company from the Council</li> <li>• intellectual property – which would be licenced to each company by way of a revocable, non-exclusive, perpetual, royalty free licence for the duration of the Resourcing Agreement</li> </ul>

ISSUE	COMMENT
	<ul style="list-style-type: none"> <li>the benefit of goods and services provided to the Council by third party suppliers – for example hire purchase assets, which would be licenced to each company for the duration of the Resourcing Agreement</li> <li>information – which would be provided to each company subject to the company complying with laws relating to data protection and freedom of information</li> </ul> <p>When services are required, a specification will need to be drawn up. The Resourcing Agreement would contain a proforma property licence, proforma secondment arrangements and resource request form. Subject to state aid compliance, the parties are free to agree other terms as required.</p> <p>The Council will need to consider whether resources will be supplied to a Trade Co on an exclusive basis or whether the Council wishes to give the Trade Co independence to obtain resources from a third party provider. The ability to call down resources should be subject to review after an initial period.</p> <p>The Council will have various obligations towards its Companies depending on the nature of the resources required (e.g. performance of services, good working order of assets).</p>
Payment of services	<p>Prices for individual services to be agreed and subject to state aid compliance. VAT, where applicable, will also be charged.</p> <p>Method of payment (e.g. monthly, annually, quarterly) to be agreed as well as the ability to set-off amounts due from Council to company.</p>
Contract managers	<p>Each company and the Council should appoint a contract manager to receive and send formal notices and communications. On the Council's side, this may (but does not need to be) the same person as the authorised representative under the Shareholders' Agreement. In particular the contract managers will be responsible for negotiating the provision of further services from the Council to each company and reviewing the standard of services provided.</p> <p>The contract managers will meet on a regular basis to monitor the performance of the Resourcing Agreement.</p>
Subcontracting	<p>The Council may subcontract the supply of any services/ assets without prior written consent of the relevant Company but it shall give the Company notice of that subcontracting.</p>
Dispute resolution	<p>The contract managers are initially responsible for resolving a dispute. If they are unable to resolve that dispute, it will then be passed to a senior member of each party, failing which the parties should follow a process of mediation to resolve any continuing issues. If mediation is not successful, the parties would then be entitled to arbitrate or litigate their dispute.</p>
New companies	<p>Any new group company will need to adhere to the terms of the Resourcing Agreement.</p>
Limitation on Council's liability	<p>There is no limit in relation to liability arising out of any loss or damage which the Council cannot by law exclude or limit. In all other circumstances, the Council's liability is limited to the value of the charges in any given financial year.</p>
Termination	<p>The Council may voluntarily terminate the Agreement at any time on no less than [x] months' notice. The Company may terminate services on [x] months' notice but the underlying Agreement remains in place.</p> <p>Either party may terminate for material breach.</p>
Boilerplate	<p>The Resourcing Agreement will contain "boilerplate" provisions relating to confidentiality, FOI, data protection, bribery and corruption, force majeure and</p>

ISSUE	COMMENT
provisions	insurance).
<b>FUNDING AGREEMENT (DEBT)<sup>2</sup></b>	
Type of facility	<p>Revolving loan facility. The borrowing company will be able to re-borrow any amount repaid or prepaid, to the extent not previously cancelled by it (i.e. the borrowing company has not confirmed that it no longer needs the full extent of the facility).</p> <p>Drawdown will be subject to a number of conditions precedent</p>
Interest rate and security	<p>Dependant on the nature of the business and strength of the borrower. For state aid purposes, the interest rate needs to take into account the UK reference rate as well as the loan margin which reflects the level of collateralisation (security) and the strength of covenant of the relevant company in terms of its rating category (e.g. strong, good, satisfactory, weak or bad/financial difficulties).</p> <p>Default interest rate will apply if an event of default occurs. (e.g. non-payment).</p>
Repayment, cancellation of facilities and prepayment	All possible, subject to notice and minimum amounts.
Continuing obligations	<p>Each borrowing company will give a number of:</p> <ul style="list-style-type: none"> <li>• representations</li> <li>• undertakings in relation to financial information, to be provided throughout the life of the loans</li> <li>• financial covenants</li> </ul>
Events of default	<p>Usual loan agreement events of default (e.g. non-payment, cross-default, financial difficulties). Remedies available would be:</p> <ul style="list-style-type: none"> <li>• cancellation of commitments to provide loan funding</li> <li>• all existing loans becoming due and payable</li> <li>• enforcement of security</li> </ul>
New companies	Each new company in the group would enter into a separate loan agreement with the Council

<sup>2</sup> We need to discuss with you the means by which you would fund any given Company, with the principal methods being debt or equity, or a combination of the two. For present purposes, we have assumed that debt will be the means of funding. State aid issues will need to be considered in each case, although there may be relevant exemptions depending on the nature of the aid and the business (for example, De Minimis Regulations, General Block Exemption Regulations, Services of General Economic Importance (SGEI) and/or the market economy investor principle) – see **Error! Reference source not found.** for further consideration of state aid issues.

PROFORMA LIST OF RESERVED MATTERS (TO BE WORKED THROUGH)

Number	Reserved Matter
	<b>Constitution of the Company</b>
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company.
	<b>Officers and shareholders of the Company</b>
2	The appointment and the appointment terms (including any remuneration terms) of any directors other than Council appointed directors.
3	The removal of any directors (including any terms on which such directors are removed from their office as directors) other than Council appointed directors.
4	The admission of further shareholders or members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
5	The appointment or removal of the chair of the board (except where the chair is absent in which case the board will appoint an alternate chair).
	<b>Future direction and development of the Company</b>
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of a material part of the business of the Company.
9	Adopting or amending the business plan of each respective company and any in-year changes (where applicable).
10	Undertaking any business or action which is inconsistent with the business plan then in force or omitting to undertake any action which is required by that business plan except with the prior written consent of the Council
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services the total value of which exceeds £● per annum to be provided by the Company to a third party not approved under the business plan.
13	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of a company
14	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	<b>Management of the business of the Company</b>
15	Changing the Company's registered office.
16	Changing the Company's name.

17	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income
18	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds £● per annum
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £● per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.
23	Changing the Company's auditors.
24	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a Teckal Co or Trade Co which has been approved under the business plan) or giving any guarantee or indemnity (other than in the normal course of trading).
25	Changing the financial year of the Company.
26	Increase or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable).
27	Declare or pay any dividend of the Company (where applicable).

This page is intentionally left blank