

Report of: Executive Member for Finance, Performance and Community Safety

Meeting of:	Date	Ward(s)
Executive	23 November 2017	N/A

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SUBJECT: Amending iCo's Articles of Association

1. Synopsis

- 1.1 iCo is the trading name of Islington Ltd, the council's wholly-owned commercial trading company. The overall aim of the company is to generate income for the benefit of Islington Council. The company currently trades in a number of areas, including memorial services, commercial waste, pest control, and arboricultural services.
- 1.2 The business of the company is directed by a Board of Directors (the iCo Board) which is comprised of two executive members and three senior officers. The company is governed by its Articles of Association, which limit the powers of the directors and specify a number of matters which are reserved for decision by Islington Council as the sole shareholder of the company.
- 1.3 To maximise the income generated for Islington Council, the iCo Board wishes for iCo to expand its business areas and take up new commercial opportunities. However, the Articles of Association currently limit the business areas the company is authorised to trade in and the ways in which it is able to conduct business. It is proposed that the Executive adopt the appended Articles of Association to allow the company to operate in a more independent, agile and innovate way.

2. Recommendations

- 2.1 That the Articles of Association of Islington Ltd be revised, as set out in the appended document.
- 2.2 That the special resolution giving effect to the decision be signed and submitted to Companies House.

3. Background

3.1 The Executive formed iCo in May 2014. The purpose of the company is 'to trade with public bodies, private organisations and members of the public in activities relates to municipal functions'. The aims of the company are:

- To operate for the benefit of Islington Council, residents, partners and other public bodies;
- To provide Islington Council as shareholder with a return on its capital employed to be invested in council priorities;
- To reinforce in-house services and ensure expertise is maintained and developed;
- To creatively bundle the capabilities of Islington Council services into products and services that are attractive in a competitive marketplace;
- To develop strong and positive relationships with our customers so that we understand their changing needs and adapt our services accordingly;
- To take advantage of technological advances and economies of scale to reduce our production and service costs.

3.2 The council has appointed a Board of Directors, which is comprised of the Executive Member for Finance, Performance and Community Safety, the Executive Member for Environment and Transport, the Corporate Director of Environment and Regeneration, the Director of Public Realm, and the Director of Service Finance. The Board of Directors set company strategy and policy, review business plans and service performance, and carry out the legal and administrative functions required of company directors.

3.3 The company is governed by its Articles of Association, which limit the powers of the directors and specify a number of matters which are reserved for decision by Islington Council as sole shareholder of the company. The effect of the current Articles of Association is that approval from Islington Council (as shareholder) is required when iCo wishes to trade in a business area that has not previously been authorised.

3.4 Shareholder decisions may be made by the Executive, or the Leader of the Council if the decision is administrative, minor, or urgent. Whilst this governance framework is intended to provide shareholder oversight of the company's activities, the result is that company's ability to take business decisions in a timely way is inhibited. This also results in the Executive or Leader of the Council taking formal decisions on relatively minor matters, which would not usually go to the Executive or Leader for formal decision if they related to a council service. Examples of decisions which have required shareholder approval include:

- The appointment of auditors;
- Changing the company's accounting reference date;
- Amending the Articles to enable the company to trade in Pest Control services;
- Amending the Articles to enable the company to buy, sell, rent and manage properties;
- Amending the Articles to enable the company to provide and manage cycle hangars;
- Approval of a share acquisition in another company, where the shares were acquired in return for consultancy services, with no financial investment made.

It is proposed that the Articles of Association are amended to better balance the business needs of the company and the requirements of the council as shareholder to have oversight of the company's activities.

4. Proposed Changes to the Articles of Association

4.1 The proposed changes to the Articles of Association are appended and are set out in the form of tracked changes. An explanation of the main changes is overleaf:

4.2 Share acquisitions, legal partnerships and joint ventures (Article 3.3)

iCo has previously been approached by organisations that would like to do business with the company through the form of a partnership or joint venture. Similarly, iCo has previously been offered shares in new 'start up' companies in return for providing consultancy services in areas where the council has

particular expertise.

The business cases for such proposals are carefully assessed by the directors of the company, and are subject to due diligence checks and legal advice. It is considered that further referral to the shareholder for decision should not be required, unless the agreement is subject to onerous or unusual terms.

4.3 The Company's Business Activities (Article 3.5)

Article 3.5 limits the company's business activities to only those authorised by Islington Council as the company's shareholder. Requiring shareholder approval to trade in new business areas can delay the launch of new services and creates additional administrative burdens.

In order to maximise the income generated for Islington Council and make the best use of resources, it is considered that the company should not require specific shareholder approval to expand into new areas of business. All areas in which iCo trades are approved by the directors of the company following the consideration of a business case.

4.4 Land and property (Articles 3.7 and 3.8)

iCo does not currently own land or manage property. However, the Executive has previously authorised the company to carry out activities related to the buying, selling, renting and/or management of properties. It is considered that further reference to the company's shareholder before acquiring or disposing of such land or property is bureaucratic and should not be required.

4.5 Loans (Article 3.10)

To ensure effective and efficient financial management, it is considered that shareholder approval should not be required for iCo to receive loan monies. iCo has previously received a loan from Islington Council, and it is considered that separate shareholder authorisation should not be required for such loans to be received.

4.6 Appointing Auditors (Article 3.13)

The audit of a company's accounts is an important administrative function which ensures financial probity. Islington Council, as shareholder, has already appointed an auditor to iCo; however, if iCo needed to change auditor for whatever reason, then reference to Islington Council for formal decision as shareholder seems unduly onerous.

4.7 Accounting practices and legal proceedings (Article 3.14 and 3.18)

Whilst iCo is wholly owned by the council, it is a separate legal and financial entity. It is considered that decisions on the company's accounting practices and legal proceedings should be made independently by the directors of the company without a formal decision being required by Islington Council as shareholder. Any delay to such decisions has the potential to cause financial or legal difficulties, and therefore it is sensible to streamline this decision-making process.

4.8 Quorum for directors' meetings (Article 7)

At present iCo has five directors. A quorum of four only allows for one director to be absent before a directors' meeting is inquorate. To ease decision-making by the Board of Directors, it is considered that a quorum of three, including one member of the Executive of Islington Council, is more appropriate.

5. **Implications**

5.1 **Financial implications:**

There are no significant financial implications associated with amending iCo's Articles of Association. Removing bureaucracy from iCo decision-making will reduce the officer time spent processing shareholder matters for formal decision by the Executive or the Leader. This will lead to a more efficient use of financial resources by the company and Islington Council.

5.2 **Legal Implications:**

Every company formed under the Companies Acts must have articles of association which are rules, chosen by the company's members, which govern the company's internal affairs. The Companies (Model Articles) Regulations 2008, made under the Companies Act 2006, set out model articles of

association. Companies limited by shares may, if they choose to, adopt their own tailor-made articles in place of all or part of the model articles. The articles of association may be amended by resolution of the council as shareholder (Companies Act 2006, section 21).

At the time that the council decided to establish its solely owned trading company, Islington Ltd, trading as iCo, it decided to amend the Model Articles in part to allow greater control by the council as shareholder in the activities of iCo. This was done by reserving various matter for decision by the council that could otherwise have been decided by iCo. The proposals set out in this report represent a dilution in the power of the council as shareholder to control the activities conducted by iCo for the reasons stated in the report. Apart from the control exercised through the Articles the council also has powers to remove directors of iCo (Article 16.2).

In deciding whether to adopt the proposals set out in this report the council as shareholder needs to be satisfied that the changes to the articles represent a proper balance between administrative convenience for iCo and oversight by the council as shareholder.

5.3 Environmental Implications

There are no direct environmental implications associated with revising iCo's Articles of Association. The environmental implications of particular services or proposals will be considered by the iCo Board as appropriate.

5.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A resident impact assessment is not required in this instance. Amending iCo's Articles of Association is a governance matter which does not directly impact on residents.

6. Reason for recommendations

- 6.1 To maximise the income generated for Islington Council, the iCo Board wishes for iCo to expand its business areas and take up new commercial opportunities. iCo needs an agile and streamlined decision-making process in order to respond to new income generating opportunities effectively. The Executive is asked to amend the Articles of Association to ease decision-making processes and ensure the best use of resources.

Appendices:

- Appendix 1 – Draft Articles of Association
- Appendix 2 – Shareholder Resolution to be signed

Background papers: None

Final report clearance:

Signed by:



7 November 2017

Executive Member for Finance, Performance and Community Safety Date

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