

EXETER GOLF AND COUNTRY CLUB LIMITED
PROPOSED ADOPTION OF NEW ARTICLES OF ASSOCIATION
EXPLANATORY PAPER

Introduction and Background

Exeter Golf and Country Club Limited (the **Company**) was formed in 1928; five people subscribed for 25 shares each and formed a plan to develop Wear Park into a golf course. The cost of the purchase and the development was £40,000 and this was funded in part by local businessmen, who invested a total of £19,980 in exchange for 19,980 ordinary shares of £1.00 each, and in part by National Westminster Bank.

Over the next 70 years, the 19,980 shares regularly changed hands (both between the businessmen that originally invested in the development of the golf course and between third parties that had a commercial interest in the Company). In December 1995, a total of 267 shareholders held the same 19,980 shares between them.

In 1995, the Company, encouraged by the prospect of a substantial VAT repayment, decided to start the process of creating a members' owned club. The aim of the Company was to ensure that the golf club (the **Club**) was ultimately owned by all of its members (via the Company) and that only Club members be permitted to hold shares in the Company. Indeed, it was a condition of the substantial VAT repayment that the Company be owned by its members.

In order to achieve this aim, the Company began the process of transferring ownership of the Company to the members of the Club and, on 2 December 1995, resolutions were passed by the Company in general meeting to increase the authorised share capital of the Company (so that all of the Club members could own shares in it) and to adopt amended Articles of Association to give effect to the overriding aim. When the vote was put to the Company, 53 members voted in favour and 1 member voted against.

When the new Articles of Association were adopted on 2 December 1995, it was (and continues to be) a condition of the Club that every member of the Club own shares in the Company. In order to maintain the status of a members' owned club, the 1995 Articles of Association included an obligation on every member of the Club to give notice to transfer their shares in the Company within one month of their Club membership coming to an end.

As a result of the Company becoming a members' club, the shares held by the initial 267 shareholders became heavily diluted and lost a significant amount of value. In order to compensate for the shareholder value that had been lost, these initial 267 shareholders were given a bonus issue of shares. The initial shareholders were, furthermore, granted an exemption from the need to give notice of the disposal of their shares in the Company within one month of their Club membership coming to an end; this small number of exempt shareholders were permitted to hold shares in the Company despite not being members of the Club. That exemption was (and continues to be) personal to the particular shareholders and cannot be transferred. In this paper, and the proposed new Articles of Association, this small group of shareholders are described as **Exempt Shareholders**.

The final stage of establishing a members' club took place in June 1996 when the then current members of the Club (2,405 in total) received shares in the Company and were registered in the Company's register of members.

Over the last 23 years there has been a substantive change in the composition of the Club's membership: the Club has seen a 50% increase in the number of adult members since 1996 (there are now 3,692 adult members) and each year approximately 800 members decide not to renew their Club membership. To date, the Club has been able to attract a sufficient number of new members in order to replace those members that decide not to renew.

As a result of the changing demographic of the Club's membership (including, in the main, a big increase in the number of transient members), a huge number of people have left the Club over the last 23 years. Most of these departing members leave without making any arrangements to transfer their shares to a continuing Club member (as required by the current Articles) and they often leave without providing the Company with any forwarding information.

Early this year, the Board of Directors identified all of those people who were no longer members of the Club but continued to hold shares in the Company (referred to as **non-member shareholders** in the remainder of this paper) and consulted the Company's solicitors to seek advice on how to manage the situation for the benefit of the Company's members as a whole.

To put the current position in context, there were 3,771 non-member shareholders recorded in the Company's register of members, holding 379,903 shares between them. This figure is increasing annually. It was clear to the Board that positive action was needed in order to manage the risk that this number of non-member shareholders posed to the Company: the position is becoming increasingly impossible to manage and the Company needs to be put back on the road to its stated aim of being a members' owned club.

The advice that the Company has received is to amend its current Articles of Association in order to ensure that, with the exception of the Exempt Shareholders, the members of the Club and the shareholders in the Company are one and the same. Since the constitutional changes adopted in 1995, the aim and intention of the Club is that it is owned by its members. The changes to the Articles of Association that the Board of Directors have been advised to recommend are designed to strengthen the provisions contained within the current Articles of Association so that non-member shareholders can be dealt with more effectively, and to eliminate the risk of shares falling into the hands of unconnected third parties.

Proposed Adoption of New Articles of Association

A set of the proposed new Articles of Association that will be recommended for adoption at the Annual General Meeting are part of the document set.

As we are proposing the adoption of new Articles in substitution for the current Articles of Association, it is appropriate to incorporate updates that bring the document in line with the Companies Act 2006. A number of the amendments relate to this updating process; they are not material in nature but reflect and adopt the Companies Act 2006 (and the Model Articles) and current best practice. Furthermore, the current Articles of Association are unclear in places and contain some wording which requires expansion or clarification in order to make them clear to the reader, including, for example, defined terms used throughout the Articles.

There are some more substantive amendments to the current Articles of Association that the Company is being advised to adopt and commentary on each of these changes is set out below.

Articles 9 and 10 – erroneous registration of non-member shareholders

We are aware of two instances where the name and address of a non-Club member has been included in the Company's register of members in error. In taking that action, the Company has given the two non-member shareholders rights similar to those enjoyed by the Exempt Shareholders.

The introduction of new Articles 9 and 10 gives the Company the right, in the future only, to require any erroneously registered shareholder to dispose of their shares (by transferring them to a Club member or to the Company) and to take action to make that happen if the shareholder refuses.

Article 11(b) – extension of time to find a buyer

When a Transfer Notice (as defined in the current Articles of Association of the Company) is served by a non-member shareholder (or deemed served within one month of their Club membership coming to an end), the Company has five years to try and find a continuing Club member willing to buy the shares from the departing member. If the Company is unable to find a buyer in that time, the Company can (but is not obligated to) buy-back the shares.

Where a non-member shareholder left the Club more than five years ago, the time limit to find a buyer for their shares has already expired. The Board of Directors does not want to treat such non-member shareholders unfairly but wants the opportunity to try and find buyers for their shares. Article 11(b), therefore, extends the five year timeframe so that the Company has a further 12 months from the date of adoption of the new Articles to try and find buyers for the shares held by such non-member shareholders.

Deletion of current Article 7(e) – sale to a third party

Article 7(e) in the current Articles of Association allows a non-member shareholder to sell their shares to any third party buyer (irrespective of whether or not they are a member of the Club) provided the transfer provisions contained in the Articles have been followed by the non-member shareholder and the Company has been unable to find a buyer or buy-back the shares itself. The non-member shareholder must find a third-party buyer within three months after the five year six month time limit for the Company to find a buyer or buy-back the shares has expired.

This clause is deleted as transfers to non-members is directly in conflict with the express desire of ensuring that Club members eventually hold all the shares in the Company.

Article 11(e) – Deferred Shares

The Board of Directors wrote to all non-member shareholders on 28 May 2019 setting out a proposal to amend the Articles to allow for the re-classification of shares held by the non-member shareholders as deferred shares (carrying no real value or rights) with the right of the Company to buy the shares back for a nominal sum and cancel them.

To provide some context, 3,771 letters were sent. The Board has received a total of 697 responses to date of which, approximately, 20 asked for further information. The Board received

564 "returned to sender". The Board has not received any response from the other 2,510 recipients.

In support of our analysis that the composition of the Club membership has changed considerably over the years, 32 of the non-member shareholders that we wrote to hold more than 500 shares. The vast majority of the non-member shareholders (over 99%) hold less than 500 shares.

New Article 11(e) is key in dealing with the shares held by the non-member shareholders that the Board have written to and from whom we have not received a response or have received a "returned to sender". New Article 11(e) empowers the Board to convert ordinary shares in to deferred shares (provided the time limits set out in the Articles have passed and an eligible buyer has not been found). Subsequently those deferred shares can be brought back by the Company for a nominal sum and cancelled.

Articles 11(e) to 11(j) set out the process, rules and regulations that need to be followed in connection with the reclassification of ordinary shares as deferred shares. Article 11(g) includes the rights that are attached to a deferred share.

Articles 12 and 13 – de-minimis exemption to share buy-back

These Articles provide the Company with some flexibility to undertake a buy-back of its shares without following the convoluted statutory procedure set out in the Companies Act 2006. This right is subject to the fixed financial caps set out in Article 12.

Article 14 – power to hold partially complete Stock Transfer Forms

In order to avoid the current situation worsening in the future, all new members of the Club are being asked to partially complete and sign a stock transfer form (leaving the number of shares, price and transferee only blank), which the secretary of the Club is keeping on file together with the new member's other membership information. When a new member leaves the Club, the Company can complete their stock transfer form in order to facilitate the smooth transfer of their shares to a continuing Club member (or an incoming member). Article 14 applies this to all members of the Club so that the transfer provisions set out in the Articles are administratively easier for everyone to follow and adhere to.