

LEGAL STRUCTURES FOR COLLABORATIVE BROADBAND SOLUTIONS

Dave Hollings, Co-operative and Mutual Solutions
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SEMINAR OBJECTIVES

- To understand the different options for collaboration
- To understand the full range of legal structures available for co-operatives
- To understand their strengths and weaknesses

OPTIONS FOR COMMUNITY BROADBAND

- Led by existing community group
- Led by new community group
- Community co-operative

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LED BY EXISTING COMMUNITY GROUP

- An existing body with a track record and systems
- No need to form a new body
- Will have other activities ongoing which compete for attention and resources
- Are there limits on the group's activities or means of raising funds
- Who owns the group, how many people are involved, how strong is the board/committee?
- Which is the tail, which is the dog and who ends up wagging who?

SET UP A NEW COMMUNITY GROUP

- A new body with new rules, new systems – can be costly and time consuming
- Need to recruit and develop new board
- Who owns the group, how many people are involved, how strong is the board/committee?
- Wholly focused on delivering community broadband – attention and resources are focused
- How will the group raise finance?

COMMUNITY OWNED CO-OPERATIVE

- A new body with new rules, new systems – can be costly and time consuming
- Need to recruit and develop new board
- Wholly focused on delivering community broadband – attention and resources are focused
- The members are the users of the service – when people sign up they become members (unless they don't want to)
- Can raise finance from members through a community share issue

WHY IS THE LEGAL STRUCTURE IMPORTANT?

- More than half of the cases I deal with where co-operatives are in trouble are due to failures in governance
- Good governance is vital to co-operatives
- Co-operatives can have an inappropriate legal form which can restrict or dictate:-
 - How they can raise finance
 - What they can deliver
 - Their ability to have a properly functioning board
 - Involving and engaging stakeholder groups as members

CO-OPERATIVE PRINCIPLES

- Voluntary and open membership
- Democratic member control
- Member economic participation
- Autonomy and independence
- Education, training and information
- Co-operation among co-operatives
- Concern for community

AVAILABLE LEGAL STRUCTURES

- Companies:
 - Limited By Guarantee
 - Limited By Shares
- Community Interest Companies
- Industrial And Provident Societies
 - Co-operatives
 - Societies For The Benefit Of The Community

INCORPORATION

- Creating a separate legal person
- The organisation is legally separate from its members
- The organisation can own property, employ staff etc in its own name
- The organisation is registered with a regulator and has to report to them at least annually
- Members' liability is limited to the value of any shares they hold or guarantees they have given
- Directors can lose their limit of liability in a few specific situations for example wrongful or fraudulent trading

COMPANIES – WHAT ARE THEY?

- Incorporated organisations
- Regulated by companies house – designed to protect shareholders
- Enabling form to allow private sector to trade flexibly
- Companies can be limited by shares or by guarantee
- Major changes in Companies Act 2006

COMPANIES - PLUSES

- Corporate status
- Limited liability for members
- Very flexible
- Familiar legal form (but Guarantee Companies less familiar)
- Provide equity in share companies
- Access to loan finance

COMPANIES - MINUSES

- Not designed for co-operatives
- The guarantee form is unfamiliar in the business sector
- The share form is difficult to reconcile with co-operative principles
- Statutory right to proxy votes for members
- No exemptions for community share issues
- No regulation of social purpose
- Investor controlled not community controlled
- Less likely to attract grants

COMPANIES LIMITED BY GUARANTEE

- Easiest form of company to administer
- Very flexible
- Corporate status/limited liability
- Most common form in the 'third sector'
- No regulation of its social purpose
- May be eligible for grant aid
- No equity

COMPANIES LIMITED BY SHARES

- Most common form of company
- Normally based on the principle of one share one vote
- Normally based on the principle that a share is literally a share – as the cake grows so does the size of the share
- Need complex rules – more than one class of share – to install one member one vote or common ownership of assets
- Every share transaction must be reported to Companies House
- Shares are not easily withdrawable when a member leaves

COMMUNITY INTEREST COMPANIES

- New organisational form specifically for social enterprises:-
 - Must have a community interest statement
 - Non-profit-distribution through an asset lock
 - Make both charitable and commercial funding more accessible
 - Establish a clear social enterprise 'brand'
- Regulated by the CIC regulator
- CIC can be limited by guarantee or shares

COMMUNITY INTEREST COMPANIES - PLUSES

- All the freedoms and flexibilities to trade of a normal company
- The social purpose is regulated
- An asset lock securing the assets for community benefit
- May be eligible for grant aid
- Can provide equity with shares always at face value (par) and a cap on dividends

COMMUNITY INTEREST COMPANIES - MINUSES

- Still an unfamiliar and largely untried form
- Bolting on social purposes to company structure – standard company features such as the statutory right to proxy still apply
- Being a co-operative is not enough to demonstrate social purpose
- No exemptions from the Financial Services and Markets Act 2000 for community share issues
- More regulation

INDUSTRIAL AND PROVIDENT SOCIETIES – WHAT ARE THEY?

- Incorporated organisations
- Regulated by Financial Services Authority
- Designed specifically for Co-operatives and Societies for the Benefit of the Community
- Limited by shares – but different from company shares
- Exemptions from Financial Services and Markets Acts for issuing withdrawable shares

INDUSTRIAL AND PROVIDENT SOCIETIES - PLUSES

- Provide corporate status
- Limited liability for members
- Designed for co-operatives
- One member one vote enshrined
- Some regulation of social purposes
- Asset lock in community benefit societies
- Can provide equity always at face value (par)
- Have exemptions under the Financial Services and Markets Act

INDUSTRIAL AND PROVIDENT SOCIETIES - MINUSES

- Unfamiliar legal form
- Legislation lags behind that for companies
- Cost of registration can be much higher
- Not usable in some circumstances because there must be three members
- May not be eligible for some grants
- Maximum shareholding of £20k for withdrawable shares (but no limit on transferable shares)

SOCIETIES FOR THE BENEFIT OF THE COMMUNITY (BENCOMS)

- By definition Bencoms are not co-operatives – they operate for community benefit not member benefit
- Membership is not open
- Can have an asset lock for community benefit
- Bencoms can look much like co-operatives where:-
 - There is a large membership which elects the board
 - The members of the bencom are members of the community which benefits
 - A community share issue allows payments of interest on members shares

Industrial and Provident Society shares compared with Company shares

- Shares provide ownership and membership in both forms
- One member one vote, not one share one vote
- Shares always remain at par value, not increasing in value with the size of the company
- Changes in share ownership are reported once a year not each time there is a change
- Shares can be withdrawable without a full auditors report
- A company share issue means forming a plc which is more heavily regulated. A society share issue uses the same form of society.
- It is easy to restrict transfer of membership rights on the death of a shareholder
- Withdrawable shares can be offered to the public without the need for an Authorised Investment Advisors report

KEY ISSUES FOR CO-OPERATIVE LEGAL STRUCTURES

- Voluntary and open membership – how easy is it for members to join and leave?
- Democratic member control – can one member one vote be enshrined?
- Member economic participation – how can members receive economic benefit?
- Autonomy and independence – fine under all legal forms
- Education, training and information – fine under all legal forms
- Co-operation among co-operatives – fine under all legal forms
- Concern for community – is there any regulation of social purpose?

And finally – where is the money going to come from?

CASE STUDY – ALSTON CYBERMOOR

- Alston is England's most geographically isolated town
- In 2001, a wireless community broadband service was installed in the town through a booster transmitter
- In 2003 this service was taken over by a community co-operative
- Service users own the broadband service on the basis of one member, one vote (unless they opt out)
- A new co-operative, Cybermoor Networks, was set up in 2011 to lay cable to Alston providing a broadband platform
- Cybermoor networks is raising some of its finance through a community share issue

CASE STUDY – MILBURN COMMUNITY CO-OPERATIVE - FELLNET

- Milburn is a small rural community 10 miles from Penrith
- They have a telephone broadband service, which is slow and unreliable
- The community aims to install a mast on the hills above the village which will relay a signal down to village hall and then to individual houses
- The broadband service will be owned by the community
- Everyone who signs up will be enrolled as a member, unless they do not want to be (opting out)
- Applied for £33k finance via a Village SOS bid, with a community share issue as back up

SOURCES OF FINANCE – TRADING INCOME

- Sales to the public and/or contracts with large organisations
- Should be the most important source of income
- Sustainability – when you can finance running costs from trading income
- Not reliant on outside decision makers for survival
- Use other sources of finance to grow the business

SOURCES OF FINANCE - GRANTS

- For:-
 - Does not usually have to be paid back
 - Most third sector organisations understand grants
 - If used for capital, it can strengthen the balance sheet
- Against
 - Grant conditions can restrict use and flexibility
 - Can lead to grant dependency – need another grant when the current one runs out
 - More groups chasing fewer grants

SOURCES OF FINANCE -LOANS

- For:-
 - Unrestricted use of money
 - Interest rates are at a historically low level
 - Several third sector loan funds are awash with money to lend if the business plan is good
- Against
 - Needs to be paid back
 - Payments are regular and usually start from the first month
 - Can weaken the balance sheet

SOURCES OF FINANCE - EQUITY

- For
 - Unrestricted use
 - Patient capital with the cost related to success of the business
 - Strengthens the balance sheet
- Against
 - Can be difficult to raise – need a good business plan
 - Whilst there are exemptions from regulation for community shares, there are still technical issues
 - Need to use specific legal forms

SOURCES OF FINANCE - OTHER

- Overdrafts
- Extended credit and leasing
- Bonds and loanstock
- Factoring – releases cash against future invoices
- Asset finance – releases cash against fixed assets

REVIEW

- A co-operative structure means that the community broadband service is widely owned by its service users
- The legal structure for the co-operative is important
- No structure is perfect – good co-operatives operate under all the structures discussed today. So do bad co-operatives.
- Different structures open up – and can close off - different sources of finance

ANY FINAL POINTS

- ANY QUESTIONS YOU WISH TO RAISE

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Dave Hollings, Co-operative and Mutual Solutions
07967 815322
dave@cms.coop

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