

26th November 2021

UPDATE ON THE PROPOSED ESTABLISHMENT OF A SUBSIDIARY COMPANY TO THE WLGA

Purpose

1. To update members on the proposed establishment of a subsidiary company, owned by the WLGA, to strengthen the ability of the WLGA to undertake specific projects.

Background

2. The WLGA is an unincorporated public body, which means that it is not a corporate entity. This gives the Association a number of freedoms and flexibilities that are not available to incorporated bodies, including exemption from the Freedom of Information Act, company law and local authority company regulations.
3. However, as an unincorporated body, the lack of a corporate identity occasionally causes practical difficulty. The WLGA Constitution provides the Association with a number of powers, including the power to employ staff and enter contracts (paragraphs 22 and 23), whereby member authorities may enter contracts (and are indemnified for such) on behalf of the WLGA, for example, relating to the WLGA's pension liabilities and the lease for the new WLGA office at One Canal Parade.
4. Over the years, the WLGA has developed various "work arounds" to accommodate its flexible corporate structure as a membership organisation. This has proven sufficient for many projects, but it can become bureaucratic and unattractive if it involves large or complex grants or arrangements.
5. The WLGA previously established a 'WLGA Improvement Services' company in 2011, a subsidiary public company limited by guarantee (now wound-down and dissolved) to manage European funded collaborative projects.

Joint Inspection Team

6. Management Sub Committee, at their meeting in February 2020 supported the continuation of discussions between WLGA and Welsh Government on the WLGA hosting a Joint Inspection Team (JIT) to support local authorities in conducting full, comprehensive expert Housing, Health and Safety Rating System (HHSRS) assessments and report their findings and recommendations to the requesting local authority.
7. The model of a JIT follows a model established in England, following the Grenfell Tower fire, established by the LGA (and carries out the work through the IDeA) and the team is made up of experienced Environment Health Officers and a Senior

Building Controller with access to a fire engineer. It also involves building control resources and legal personal and back-office support.

8. The Welsh Government would like the WLGA to host a JIT on their behalf however their lawyers have questioned the legal status of the WLGA being an unincorporated body in entering contracts to undertake the necessary work of the JIT.
9. The WLGA Executive Board at their meeting in October 2021 agreed the commissioning of legal advice to set out options (which included Establishing a company limited by guarantee) for the delivery and governance of specific services in the future (including the proposed Joint Inspection Team).

Summary of Legal Advice

10. Initial legal advice has now been received from Capital Law. The advice is drafted in the context of a longer-term and wider issue as to whether the Association may wish to incorporate its status in the future, becoming a company or another type of corporate body with separate legal personality, and the potential implications which this would raise, but it also sets out other alternative options to incorporation which would also strengthen the WLGA's ability to enter into more detailed contracts in its own right.
11. There are a number of options available for the legal structure of a new or subsidiary legal structure for the Association. These options include the following, and the note identifies the pros and cons of each option:
 - A private company limited by shares
 - A private company limited by guarantee
 - A limited liability partnership
 - Registered society
 - Community Interest Company
 - Unlimited company
12. It is proposed that a further paper will be prepared for members consideration in the future around the legal status of the Association over the longer-term. However, given the need to make progress an appropriate option more quickly to enable the Association to engage with Welsh Government specifically on the JIT, a specific approach for this purpose is needed in the short-term.

Proposed way forward

13. The legal advice notes that a new company can be established to enter into contracts for new projects that would otherwise be overseen by the WLGA members, while a longer-term approach is decided. Consideration would need to be given to structure, membership accountability, governance any shared arrangements and employees.
14. The note advises that a private company limited by guarantee (PLG) would be appropriate for such an approach. A PLG is a legal entity which is separate and distinct from those who own it and has members (otherwise known as guarantors) who each guarantee to contribute a pre-determined amount of assets of the PLG is

it is wound up, usually only a nominal fee (e.g. £1.00). the advantages of a PLG include efficiency, limited liability; flexibility, governance arrangements; accountability; regulation and public perception of a legal entity.

15. WLGA previously established a subsidiary company in 2011, called WLGA Improvement Services and it was established using a PLG. The company was established to enable the WLGA to receive European funding. Following the end of this funding, the Company was wound down and dissolved in 2019.
16. Establishing a new company limited by guarantee is relatively straightforward. A PLG can be incorporated and registered at Companies House quite quickly. Based on previous experience, in practice, the PLG would look and feel the same both to Members and staff, albeit there would be different financial and accounting arrangements in place for the company and the rest of the Association's business.
17. Company Directors, which would include senior members, would need to be appointed, and their duties and roles set out in advance.
18. A private limited company would also require an adoption of Articles and the contents of the Articles would need to address and cover: objects; membership; membership rights; directors; committees; members; interest; members' reserved powers; and dissolution.
19. Further work on establishing a PLG is being further explored by officials, which would be used to enter into an agreement with Welsh Government to host the JIT, the company will strengthen the WLGA's ability to enter into contracts and to take on other additional work in the future.

Recommendations

20. Members are asked to:

- 20.1 Note and comment on the content of this update; and**
- 20.2 Note an update on progress to be provided to the Management Sub-Committee in December, including detail on practical operation of such a company, including proposed Articles and details of operation.**

Author: Dr Chris Llewelyn, Chief Executive
Tel: 07767 206150
E-mail: chris.llewelyn@wlga.gov.uk