

Activity – Choosing a Constitution – FairShares Live Action Role Play

Based on your participation in this role play, answer the following three questions.

- 1) What legal issues arise when creating a solidarity co-operative in the UK?
- 2) What obstacles to creating a solidarity co-operative exist under co-operative law?
- 3) What obstacles to creating a solidarity co-operative exist under company law?

Introduction

Future Energy is a fictional UK enterprise based on a real case study that occurred during a knowledge exchange project in 2011. It has operated for three years as an unincorporated partnership whilst developing the product and testing the domestic market for solar panels. The founders have developed a business plan that envisages attracting both social investment and government funding to develop the enterprise. They need to change from an informal partnership to an incorporated enterprise to support the plan. Having taken advice, they have narrowed the choice down to becoming a co-operative society (under the Co-operative and Community Benefit Societies Act 2014) or a co-operative company (under the Companies Act 2006).

The Role Play Scenario

The founders of Future Energy have developed self-build renewable community energy technology. After three years, they are starting to generate a surplus from sales to private domestic customers. However, their goal is increase the social impact of their product through working with partners committed to mutual aid principles. All founders want to form a solidarity co-operative but this has led to a heated debate on whether it should be a co-operative society or co-operative company. To date, one founder has strongly favoured incorporating as a co-operative society. Another wants to incorporate as a company. The other two founders are still undecided. To help reach a decision, a consultant from Evolutesix has been hired to investigate the relative advantages and disadvantages of co-operative societies and companies in England and Wales.

Background

Future Energy's founding partners (three scientists and one businessperson) developed a low cost renewable energy product whilst studying at university. Their partnership has piloted selling solar panels to domestic buyers and secured a viable income stream. They now want to expand into new markets. A government fund exists for enterprises to develop their social impact in support of sustainable development. Together with a housing association and a community group, they want to bid for funds to adapt their product for large scale installations in housing associations. Advice from the funder confirms that only incorporated entities are supported. Future Energy is currently unincorporated. Conversion to an incorporated entity would not preclude Future Energy from presenting a good track record of trading. It would be assessed as an established business, not a start-up enterprise.

Business Model

Future Energy currently has two revenue streams: hardware sales and service sales:

- 1) **Hardware:** private sales of solar panels to domestic customers have a 'mark-up' of 40% on the cost of manufacture). At the moment, an installation charge of £3,500 produces a nett surplus (after labour costs) of £500. The current business plan envisages expanding the market for domestic customers over 3 years to 20,000 customers, achieving £70m from hardware sales, netting £10m in surpluses.
- 2) **Services:** Maintenance contracts exist for all domestic installations (charged at the point of sale, drawn down at the rate of £180/annum for 20 years). For this fee, there is an annual inspection and free replacement of any defective panels for the lifetime of the installation. With 20,000 customers, the company expects to draw down £3.6m in fees each year, which (after labour costs) nets £0.6m/annum in surplus.