5 Establishing a Local Group to Develop or Invest in a Wind Farm Project

This section outlines the first steps in the establishment of a local group to facilitate community participation in a wind farm project. It includes a discussion of the alternative legal structures available and the various means of raising the necessary finance.

5.1 Establishment of a Local Group

The first step in any community's involvement in wind energy development is likely to be the establishment of a local group. This can be quite informal at first, just a network of friends arranging a public meeting at which a speaker from a relevant organisation can explain the possibilities to them.

Communities of Interest and Communities of Place

While there are two types of community – communities of interest and communities of place - for the sake of simplicity, we'll confine our discussions here to communities of place. It should not, however, be forgotten that the hybrid between these two forms of community – a community consisting of people interested in a particular place and the people who live there – can be very effective in raising funds and getting things done, as shown in the Bere Island example (see Part I, Section 2.2).

Only if enough members of the community decide, following such a meeting, that they are seriously interested in investing in wind energy would an actual organisation be set up. This would not need a legal structure just yet. The legal structure should only be established shortly before investments are actually made. However, the members of the group would all become individual members of the proposed REAG so that it could function as an investment club and legally provide them with investment advice. See box opposite for details on investment clubs.

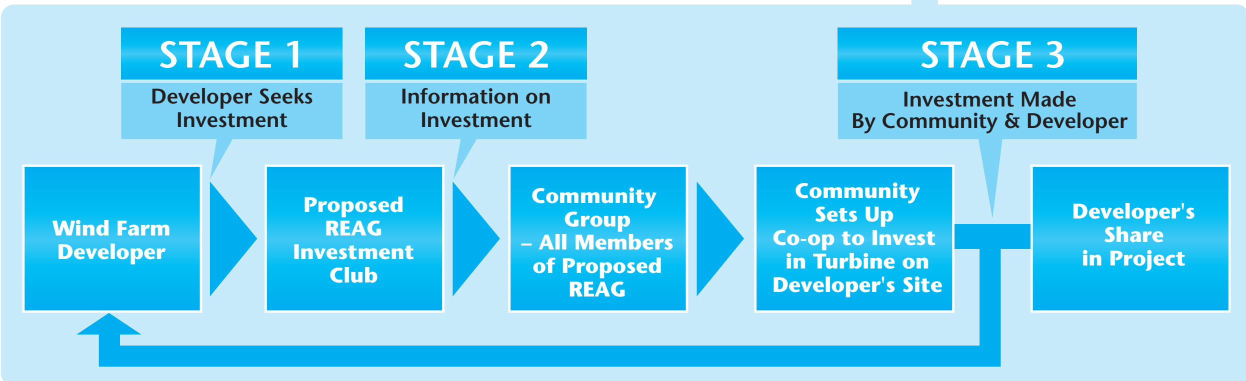
The Investment Club

One of the key functions of the proposed Renewable Energy Advisory Group would be to act as an investment club. The laws regulating the offer of investment opportunities to members of the public are quite restrictive but, once someone joins an investment club, they cease to be a member of the public and the laws do not apply. In particular, the expense of issuing a prospectus to potential investors can be avoided.

One way the proposed REAG could operate as an investment club is that developers could approach it with proposals for projects. The REAG could assess these and forward details of those considered viable to members who would then decide for themselves whether or not to go ahead. If members decided to invest, they could then set up a company or co-operative to act as the vehicle for their investments. The diagram below shows how the mechanism would work.

The REAG would be a 'not for profit' company, owned and controlled by its members. It would cover the cost of running the investment club from membership fees and by taking a proportion of the shares in the co-operatives or companies set up on its advice. ***File 12: Investment Club or Fund.***

Figure 5: The proposed Renewable Energy Advisory Group's Investment Club Mechanism



5.2 Types of Legal Structure

When a group has decided what it intends to do, it would require advice on what sort of legal structure, constitution, objectives and rules of procedure it should adopt for that purpose. (For further information on legal structures see ***File 13: Types of Legal Structures***). Two of the options for legal structures are:

- An Industrial and Provident Society (Co-operative)
- A Private Company Limited by Shares

1. An Industrial and Provident Society (Co-operative)

A co-operative is usually chosen where the community investors have a social as well as economic purpose. Rules should be established governing membership of the society. While these must not impose artificial restrictions upon, or discriminate against, any persons, it is possible to set criteria such as residency in a particular location and/or the purchase of a minimum number of shares. The rules of the co-operative must be approved by the Registry of Friendly Societies and a co-operative must have at least seven members. Details on how to establish a co-operative, with typical Articles of Association and Memoranda of Agreement are available on the Irish Co-operative Organisation Society's[40] website (www.icos.ie).

Advantages of a Co-operative structure

- The co-operative may qualify for Business Expansion Scheme (BES) relief (to 2006);
- Each member of the co-operative has the same voting rights (one member, one vote) but varying investment amounts are allowed;
- Investor's liability is limited to shares purchased;
- A local investment club or fund can invest in a co-operative and may find it attractive to do so as it has similar characteristics to those of a limited company.

Disadvantages of a Co-operative structure

- Has limited investment capability;
- Maximum investment criteria may apply;
- The shares are not readily tradable;
- Registration of a co-operative takes at least three months.

Community Considerations

The co-operative structure would allow any number of local people to be investors, as well as setting up an organisation that could facilitate other projects in the area. Each investor would have equal voting rights, however if the investor wishes to exit their investment, they can only sell shares to other investors, and not to the co-operative. This legal structure is ideal for the broadly-based community investment groups discussed in Part II, Section 4.1.

2. A Private Company Limited by Shares

A Private Company Limited by shares may issue shares with various rights attaching. There are two main types of shares, Ordinary Shares and Preference Shares, however it is possible to have several other classes of shares depending on particular circumstances. Ordinary Shares usually have voting rights and Preference Shares usually carry no right to vote, but rank ahead of Ordinary Shareholders in the event of the payment of a dividend or winding up. Shares may not be offered to the general public.

Advantages of a Private Company Limited by Shares

- A Private Company Limited by shares may qualify for Business Expansion Scheme (BES) relief (to 2006);
- Shares are transferable and tradable privately thereby providing a clear exit route for investors even if the company is seeking BES;
- Voting shares and non-voting shares enable each member to have voting rights commensurate with their investment. This can prove to be useful when attracting certain types of investors;
- It can attract investment club (***File 12: Investment Club or Fund)*** or fund type of investment without having to concern itself with investor numbers (see Community Considerations below);
- The registration of a company is a relatively simple procedure;
- It may issue a limited circulation type prospectus;[41]
- As with a co-operative, the liability of investors is limited to the value of their shares.

[40] As the co-ordinating organisation for co-operatives in Ireland, ICOS provides a range of services to its member co-operatives and represents them on national and international organisations.

[41] The company can decide who to ask to invest.

Disadvantages of a Private Company Limited by Shares

- Cannot offer its shares to the general public;
- Can offer shares to known associates without the need for a prospectus;
- Must re-register as a public limited company if a wider investment base is needed;
- Can incur high Corporate Compliance costs.

Community Considerations

The Private Company Limited by shares structure does not provide the flexibility for larger-scale projects but would suit smaller-scale ones. It allows any number of local people to be investors if they work through an investment club, such as the proposed REAG. If an investment club or fund were not used, there is a limit of 50 on the number of investors eligible to participate. If the number rose above that, the company could be converted into a public company but the compliance costs of this are higher. Investors would have the security of knowing that, if they wished, they could exit their investment through a buyback arrangement with the company.

Legal Structures - Points to note for Community Groups

The establishment of a company or a co-operative requires the adoption of a **Memorandum of Association** and **Articles of Association.** These documents describe the objectives of the company or co-operative, the financial liability of the members and the internal rules of the company governing shares, general meetings, directors and secretary, dividends and capitalisation of profits if appropriate. The content of these documents would depend on the objectives of the community group and could vary significantly from community to community. The proposed REAG, if established, could assist with the registration process and provide drafts of the required documents.

If large numbers of small investors want equal ownership then a co-operative is the best structure. If there are several large investors with whom a number of smaller investors wish to share ownership in proportion to their level of investment then a private limited company is best. In either case, the **Shareholders' Agreement** will set out all the rules by which the company or co-operative members will abide.

It could cost up to €2,000 to set up either type of entity and the community should allow for auditing costs of €750 - €1,000 per annum. The set-up cost includes registration costs, which are listed on the Company Registration Office website (www.cro.ie), and legal fees. The establishment of an REAG would allow community groups to adapt the pro-forma Memoranda and Articles of Association and Shareholders' Agreement provided by that organisation and legal costs could be kept to a minimum.

The main point of establishing either form of legal entity is to protect the individuals involved by limiting their liability if things go wrong. The Renewable Energy Partnership strongly recommend that the registration of a company or co-operative be delayed until shortly before some risks are to be taken, such as just before the actual investments are made or the group begins to spend large amounts of money. Before that, an informal organisation with clear objectives and rules should be all that is required. Indeed, it may not be necessary for a group of large investors to set up a company at all. They can leave that to the commercial developer and just buy shares as individuals in the project.

5.3 Raising Finance

In the broadly-based community investment group case, the main objective is likely to be to enable as many people as possible to invest wisely in wind energy. A secondary objective (from the perspective of building a more sustainable local economy) will be to bring as much income into the community each year as possible.

This means that such a co-operative would not wish those of its members with inadequate savings to raise the money for their shares by borrowing from a commercial bank. Instead, it would prefer them to borrow from the local credit union as the interest that they would pay would go to lenders from the locality i.e. as a dividend to those who save in the credit union.

The 'Community Ownership of Wind Farm Projects' study[42] found that €500,000 was the minimum amount required to attract the interest of commercial developers. Therefore the community group will need to set itself the target of recruiting enough members to raise this amount.

Of course, there is no need to raise this money in advance of a suitable project being identified. Indeed, it would be very hard to do so. After the investment group has been set up, all its committee can reasonably do is hold an occasional public meeting both to spread the idea of community investment in wind energy and to let those who have already expressed interest know that things are still moving along. Articles in the local newspaper and talks to local groups and schools would also help. Then, when a suitable project has been identified, the effort to get people to commit themselves to making an investment would start in earnest. However, if the group comes to an agreement with the developer before planning permission is obtained it should have at least a year to raise the money required as this would only be paid over after the wind farm has been built and successfully commissioned.

In the case of the narrowly-based community investment group, the main objective is likely to be gaining the maximum return on the investment. They will therefore want to put a limited amount of risk capital into a wind farm company and then have the company borrow the balance of the capital needed to carry out the project - perhaps 85 per cent - from a commercial bank. Very probably, the founders of the group will be able to recruit all the additional investors they need through local social networks and there will be little need for public meetings and press publicity at all.

In the broadly-based case, then, the loan finance for the project would probably be raised by dozens of people, some borrowing small amounts as individuals from the local credit union. Each borrower would be personally responsible for repaying their own loan, regardless of how the wind farm project developed. The credit union would not be lending to the wind farm directly but to individual members of the community group secured on their standing in the community. In the narrowly-based case, by contrast, it is the wind farm company which is the borrower, not the investors as individuals. The liability of the latter is limited to the issue price of shares they have bought and the bank will require the project's assets to be pledged as security.

For further information see ***File 14: Financing for Community Entry*** and ***File 15: Investment Incentives and Exemptions***

[42] CSA Group Ltd Final Report submitted to Renewable Energy Partnership, December 2003