



APSE Policy, Governance & Strategy Seminar 2016

The legal framework surrounding trading and charging powers

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What's the difference?

Charging

- Making money from delivering your services

Trading

- Just making money

Brief History of Charging and Trading

In the beginning

Some specific legislation

S111 Local Government Act 1972

Spare Capacity

Will we get away with it?

Challenges

Court

- McCarthy and Stone v Richmond upon Thames LBC

Central Government

- DLOs, CCT

Audit Commission

More Legislation

S150 Local Government and Housing Act 1989

Local Government Act 2003

Localism Act 2011

AND REGULATIONS AND GUIDANCE

Specific Powers



Encourage Visitors

- S144 LGA 1972



Provision of Entertainments

- S145 LGA 1972
- Power to charge



Provision of off-street parking, and parking on roads without payment

- Part iv Road Traffic Regulation Act 1984



Recreational Facilities

- LG (MP) Act 1976

Providing Goods and Services to Public Bodies

- Local Authorities (Goods and Services) Act 1970
 - Authority may provide to a **Public Body**:
 - Goods and materials
 - Administrative Professional or Technical Services
 - Use of vehicles plant or apparatus
 - Works of maintenance
 - Such terms as to payment or otherwise as the parties consider appropriate

General Power of Competence (Localism Act)

- Power to do anything that individuals may generally do
 - Even though in nature extent or otherwise
 - Unlike anything the authority may otherwise do
 - Unlike anything that other public bodies may do
 - Individual with full capacity
- Anywhere in the UK or anywhere else
- For a commercial purpose or for a charge or without a charge
- For or otherwise than for the benefit of the Authority or its area or residents

Charging for Services

Local Government Act 2003

- Relevant authority may charge for a service if—
 - authorised, but not required, to provide the service
 - the recipient has agreed to its provision.
 - does not apply if another power or express prohibition to charge for the provision of the service,
- Duty to secure that income from charges does not exceed the cost of provision
 - taking one financial year with another.

Localism Act

- power to charge the person for providing a service only if—
- (not one that a statutory provision requires the authority to provide to the person,
- the person has agreed to its being provided, and
- the authority does not have power to charge for providing the service.
- taking one financial year with another, the income from charges does not exceed the costs of provision.

Power to Trade

Local Government Act 2003

- Authorised to do for a commercial purpose anything which authorised to do for the purpose of carrying on any of its ordinary functions.
 - Not where required or authorised under ordinary functions
- Power only exercisable through a company
 - part 5 of the Local Government and Housing Act 1989.
 - Prepare business case
 - Recover costs

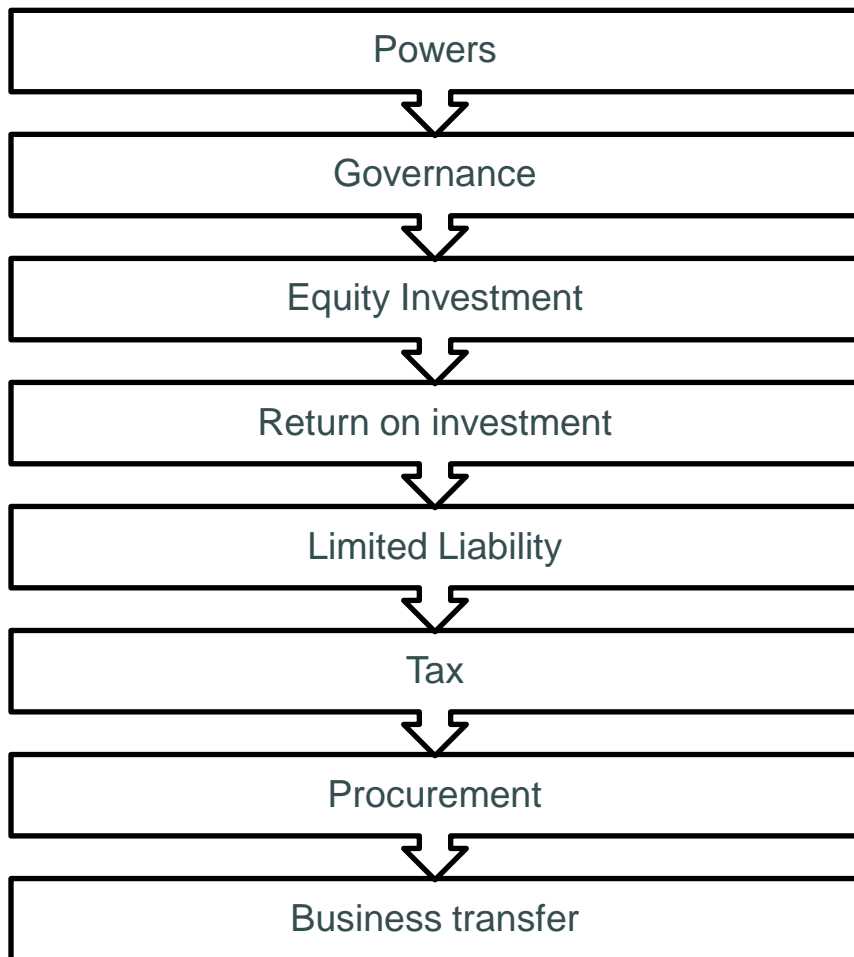
General Power of Competence

- Limits on doing things for commercial purpose under the General Power
 - Only through Company
 - Not if activity is a duty
 - Subject to
 - pre-commencement limitations
 - post commencement limitations



CORPORATE STRUCTURE

Corporate Structure?



Local
Authority
Structure

Companies
Limited by
Shares

Company
Limited by
Guarantee

Community
Interest
Companies

Industrial and
Provident
Societies

Limited
Liability
Partnership

Teckal Exemption

In-house award exempt



Not a contract if not a separate entity

Extended to wholly owned
“Subsidiaries” if meet the “Teckal
Test”

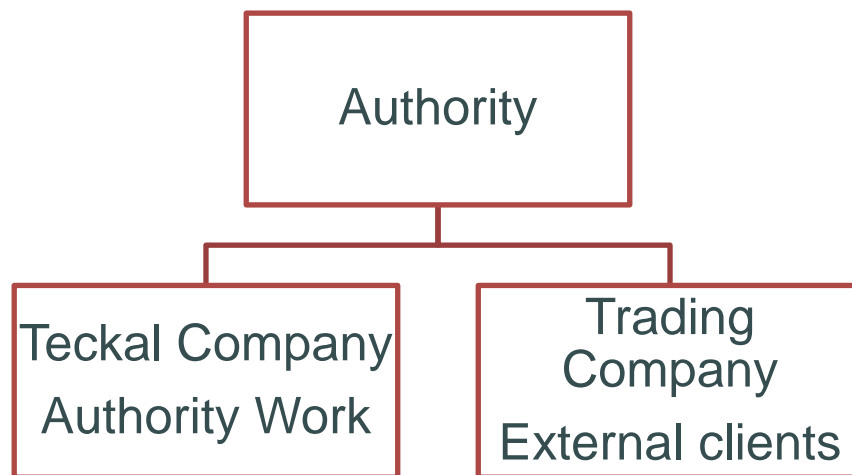
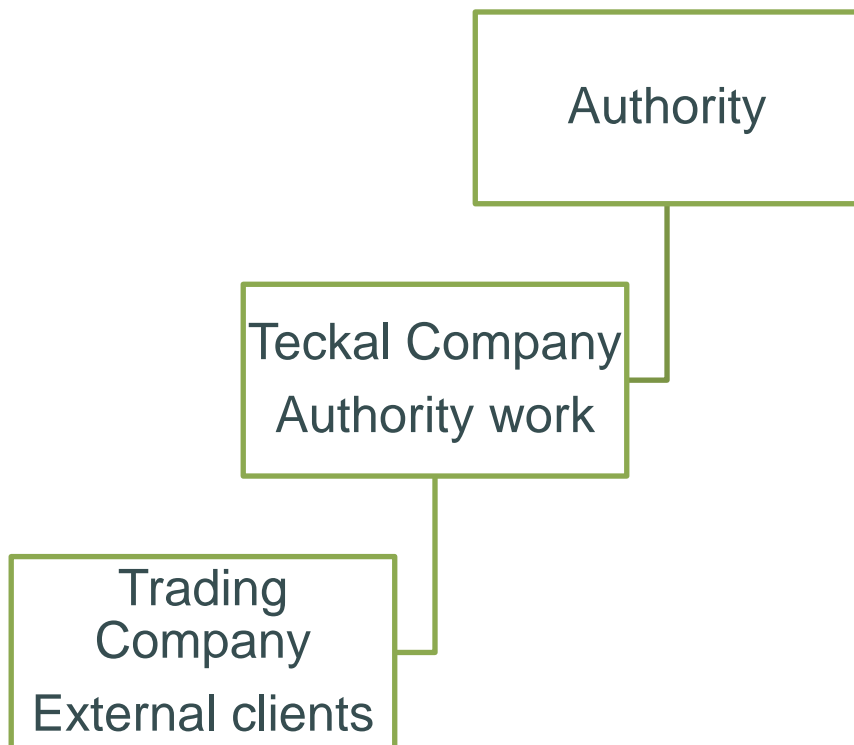


Contracting Authority able to exercise control
over the company comparable to that they
could exercise over their own departments ; and

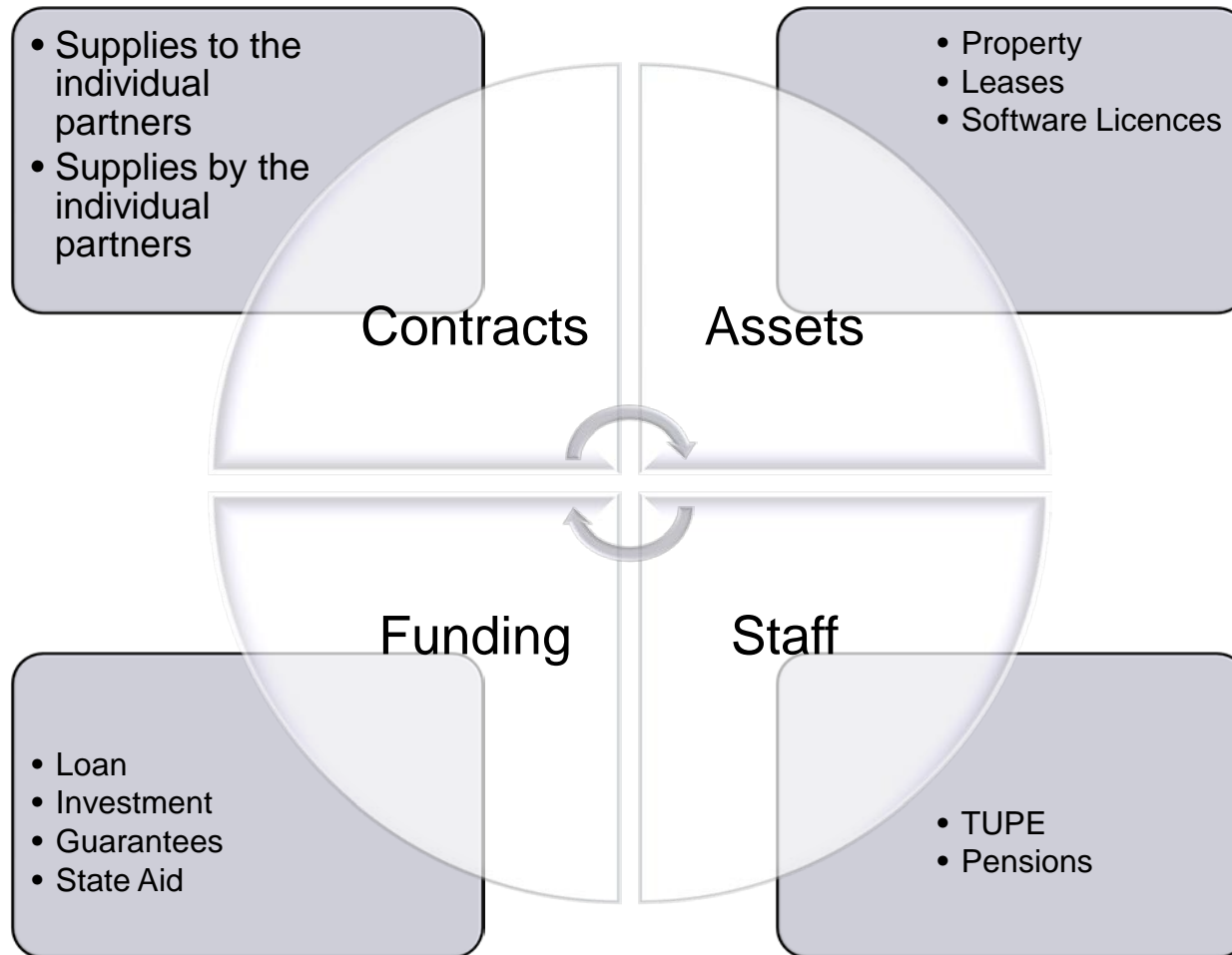


Must carry out the essential part of its activities
with the Contracting Authority

Will a group structure help?



Business Transfer Issues



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