



Housing association circular

The term "housing association" in this and related documents means registered social landlord.

RSL 05/08 **Group Structures**

This circular sets out the requirements for housing associations registered in Wales wishing to create group structures or seeking to change existing group structures. It replaces Welsh Assembly Government circular 02-06 Group Structures.

Effective date: 1 October 2008

Status: Criteria for registration

Distribution: To all housing associations registered in Wales.

1 Introduction

This circular does not encourage or discourage the formation of group structures, nor does it put forward any preferred models. In this circular the word subsidiary has the meaning given in section 60 of the Housing Act 1996.

2 Policy objectives

- (a) to protect public investment
- (b) to protect the reputation of the sector and maintain the confidence of private lenders
- (c) to ensure the main focus of housing associations is the provision of social housing
- (d) to ensure that surpluses generated by housing associations are used only to support the permitted objects of housing associations
- (e) to allow housing associations to structure their operations in a business-efficient way

3 General requirements for group structures

- 3.1 The parent must be a Welsh registered social landlord (RSL).
- 3.2 The proposed group structure must not disadvantage the interests of tenants and future tenants.
- 3.3 Parent RSLs must be able to demonstrate that they are in control of their subsidiaries, whether they are registered or not.

- 3.4 Proposals for new group structures or changes to existing group structures will require written approval by the Welsh Assembly Government (the Assembly Government). Existing lenders should also be consulted. When seeking Assembly Government approval an RSL will need to provide a business case that demonstrates the specific benefits the proposed group structure will achieve and that the short term costs of establishing or changing a group structure are outweighed or at least balanced by longer term efficiency gains.
- 3.5 RSLs will need to obtain their own legal advice in respect of their powers and objects and to ensure that the requirements of this guidance and, where relevant, other regulators are complied with.

4 Requirements applying to RSLs within a group

- 4.1 The regulatory returns and annual accounts of RSLs must make clear all horizontal and vertical relationships with other group members. All intra-group movements of resources, including any collateral liability, equity investments, loans and on - lending must be disclosed.
- 4.2 RSLs should make clear to their lenders the status of the entity with whom they are dealing and their relationship with other members of the group.
- 4.3 Each RSL within a group must be independently financially viable.
- 4.4 The Assembly Government expects a parent association to support, or secure support for the financial obligations of any subsidiary that is an RSL, provided in the case of a parent that is a charity that it is legally capable of doing so. In the event of a subsidiary that is an RSL getting into difficulties and the parent or other members of the group are unable to provide necessary support the Assembly Government will consider: -
- (a) facilitating transfer of engagements to another RSL.
 - (b) exercising powers of intervention under sections 39 to 60 of the Housing Act 1969.
- 4.5 The primary objects and activities of RSLs within any newly created groups must remain as set out in their governing instruments as approved at registration.

5 Requirements applying to non-registered subsidiaries

- 5.1 It is permissible for Welsh RSLs to maintain unregistered subsidiaries provided that the requirements of this guidance are met.
- 5.2 A non-registered subsidiary must be a separate legal entity from a registered parent and other registered members of a group.
- 5.3 A non-registered subsidiary must ensure that any third party with whom they are dealing is clear that they are dealing solely with the subsidiary and not the parent.

- 5.4 All financial and contractual arrangements between an RSL and an unregistered subsidiary must be at arms-length and any loans or investments must be on a commercial, secured basis.
- 5.5 All intra-group transfers of funds or assets must be clearly shown in the accounts of the parties, which shall be made available to the Assembly Government.
- 5.6 RSLs must not stand behind non-registered subsidiaries that run into financial difficulty unless they can satisfy the Assembly Government that there is no leakage of the RSL's reserves or assets into a non-registered subsidiary and that to do so is in the best interests of the RSL. They must also avoid actions that imply they will be liable for the debts or obligations of an unregistered subsidiary.
- 5.7 It is not permissible to issue a parent company guarantee in respect of an unregistered subsidiary and any "letter of comfort" should be drafted with care, taking legal advice to ensure that general assurances cannot be construed as guarantees.

6 Relationship between a registered parent and an unregistered subsidiary

6.1 Control

The parent must ensure that the subsidiary has a board of directors competent to direct its business autonomously. The parent should, however, determine the limits within which the subsidiary may exercise its autonomy, and financial and other limits within which the subsidiary must operate, or outside which it must seek the parent's consent. Such limits may be imposed by general directions using the parent's general powers of control, or by an agreement prepared for this specific purpose. The parent must not give instructions on how the subsidiary is to operate within those limits.

6.2 Composition of board

Directors of the parent may also be directors of the subsidiary. It must be clear that when taking decisions as directors of the subsidiary they act solely in the interest of the subsidiary. In order to ensure that each board has some members free from conflicts of interest, some of the directors of the parent should not be directors of the subsidiary, and some directors of the subsidiary should not also be directors of the parent. In order to ensure that the chair of the subsidiary is free from conflict of interest the parent and subsidiary should not be chaired by the same person. It is preferable for the subsidiary to be chaired by a director who is not also a director of the parent; where such arrangements are contemplated independent legal advice should be taken to avoid inadvertent exposure of the parent to liability for the debts of the subsidiary.

6.3 *Corporate identity*

All RSLs must ensure that their corporate identities are distinct and separate from any unregistered subsidiaries. Unregistered subsidiaries must not have similar names or logos to their parents, nor may they include “*housing association*” or “*cymdeithas tai*” in their title. The design of stationery and signing of a subsidiary should be difficult to confuse with that of the parent. Where a group name or logo appears on stationery it must be less prominent than that of the subsidiary and particular care must be taken to ensure that any third party with whom they are dealing are clear that they are dealing solely with the subsidiary and not the parent.

6.4 *Shared accommodation*

One company (preferably the parent) should own the premises and make suitable charges for the accommodation used by other organisations. Use of the accommodation should be subject to a formal agreement, which sets rental charges at commercial terms. Where offices are shared, different companies should have different telephone numbers and calls should be answered in the name of the company and not the group.

6.5 *Shared staff*

The use of joint contracts of employment where one of the employers is unregistered will only be permitted with the prior written agreement of the Assembly Government. Any application for such consent must be supported by a strong business case which satisfies any regulatory concerns, demonstrates the benefits of the arrangements and sets out the measures the association will employ to minimise associated risks. In cases where consent has not been granted and members of staff are shared, one company should be the sole employer and make suitable charges to other companies using those members of staff. Charges should be realistic and subject to a formal agreement.

6.6 *Services bought and sold*

Services bought from an unregistered subsidiary must demonstrate value for money. Services sold to an unregistered subsidiary must be subject to a formal agreement and be on a basis that at least fully covers costs. Any equipment or other asset purchased by a parent (or other registered group member) for use by an unregistered subsidiary should be leased to the subsidiary on terms that earn income at least equal to commonly available market investment rates.

6.7 *Accounting records*

Accounting records and documentation must always show clearly to which company they relate, and to which company they belong. Where the parent provides accounting services to the subsidiary it is particularly important that decisions about the content of the subsidiary’s accounts, and especially their approval, are clearly seen to be decisions of the subsidiary.

Enquiries relating to this circular should be directed to Social Housing Regulation Branch, Welsh Assembly Government.