

# COMMUNITY RENEWABLE INVESTMENT CLUB

## HANDBOOK

### Introduction

Community investment in wind farms is common in Germany, Sweden and Denmark but, with limited exceptions, has not flourished in the United Kingdom. It is evident that in those countries there has been different planning regimes and government funding arrangements which have permitted greater opportunities for community ownership particularly of wind farms. This community ownership has run alongside larger wind farm Schemes which would be much more common in the United Kingdom.

Community involvement in wind farms has demonstrated itself as a way in which communities, by understanding the function of wind farms in a diversified and sustainable energy market, may overcome resistance to a wind farm in the first instance which may assist planning permission for the wind farm obtaining approval under the planning process.

The diversified energy market has led and continues to lead to the redundancy of large centrally sited generating facilities which concentrates visual intrusion and pollution in large sites. It has led to a renewal of more local facilities of generation not only gas but also smaller hydro schemes or other renewable technology.

Developers are aware of the importance of seeking community support for a wind farm development. That support can come from not objecting to a proposed wind farm to writing in support of the Development to the local Planning Authority. Developers have found it difficult to involve communities in the benefits of a wind farm. A Developer may involve communities by establishing some type of Community Grant Fund which is derived from the annual income received by the Developers of the wind farm. Typically, annual amounts of between £1,000 and £3,000 per wind farm are offered. A Developer may establish a local committee comprised of representatives from Parish Councils or Voluntary Organisations to decide on how the money should be spent. It may be simpler for the company if the monies which are made available are restricted to charitable purposes.

If Community Organisations take the initiative and enter into a partnership with the Developer to assist the process through the planning system it is arguable that the community should obtain a much larger annual donation from the generator.

The diversified and more localised energy regeneration supply market which is developing not only in wind but in gas powered

combined heat and power, landfill for gas biomass fuel stations all offer similar opportunities for community planning gain. All these developments have a visual impact and some have, to a greater or lesser extent, noise or emissions impact over which communities can bargain. Overcoming planning permission may be seen as communities as an opportunity to have more than a "grace and favour donation" from the Developer in view of the costs which the Developer can incur in appealing a planning refusal on an otherwise viable project.

## **Experience of Community Investment**

An alternative way of community involvement is for the community to invest itself. The remainder of this Handbook gives consideration as to the role a Community Renewable Energy Investment Club (CREIC) can play in that process.

The Developer Wind Prospect is seeking to embark on community involvement in wind farms in the East Anglian Fens. The community of Dolgellau in Wales has also explored community involvement in a hydro generation scheme.

The Energy Technology Support Unit in AEA Technology Plc has sought to help communities understand community investment through their publications on Community Involvement in Renewable Energy Projects published by the DTI in 1994, 1995 and 2000. Baywind Energy Co-operative Limited in Cumbria has developed using one of the methods set out in that report. It has raised a total of £1.9 million of equity investment and now owns six turbines across two wind farms.

There are a number of points about Baywind which are worth recording. The Swedish developer, The Wind Company, helped the community establish the Co-operative. This was an additional expense for the Developer. The Developer took the risk in building the first wind farm and provided its expertise in assisting Baywind to find shareholders so that it could purchase two out of the five wind turbines on the first farm which it built, and one from the second. The community invested after much of the risk had passed. The risk which the investors had was essentially limited to machinery breakdown, which to some extent was covered by regular maintenance, insurance and guarantees, and whether the wind blew at predicated speeds. Investors were invited to become shareholders by Baywind making a public offer of shares in the co-operative which gave preference to local shareholders. The size of the investment required that it was necessary for Baywind to go beyond the immediate region in which the investment took place to find investors.

By the time of close of the second offer, 60% of the investors were from the North West Region with an average investment of £2,000.

At the start of the offer of the third turbine the existing investors indicated that they were interested in one third of the new offer. The new offer closed in less than three months as against the six month time period required for the first two offers.

Baywind has now purchased the remaining three turbines on the original Harlock Hill wind farm Site and owns the whole wind farm. The sixth turbine is part of the Haverigg II wind farm. Baywind, again, owns the turbine outright but it sells its electricity to the wind farm owner who, in turn, has a Power Purchase Agreement with the Non-Fossil Purchasing Agency

## **Investment Clubs**

Investment Clubs to date in the UK have tended to take two different types. Firstly, the informal investment club of private investors interested in sharing experience to make pooled investments in shares on the Stock Exchange. These organisations are ably supported by an association called Pro-Share and take the form of partnerships. They are restricted to 20 members.

A second type of organisation has been the network of business angels who invest in commercial businesses and often become engaged as Directors too. This can be organised through a company limited by guarantee.

There has been a third experience in France which may also be relevant sometimes. Small investment clubs called CIGALE have been established to invest in community based businesses as a predominantly social investment.

## **How developers finance projects**

Developers usually seek to establish wind farms or other renewable energy projects as separate businesses in the form of a company limited by shares which own a bundle of rights comprising in the case of a wind farm:

- a lease of property on which wind turbines can stand;
- a Power Purchase Agreement;
- Planning Permission;
- Turnkey Construction Agreement; and
- Ongoing Operation and Maintenance Agreement or Service and Warranty Agreements.

For a developer seeking to finance the construction of a wind farm, it will be looking to a mixture of equity capital and debt. Larger

companies will provide the equity share capital from their own resources and look to banks for debt.

On a small renewable energy project, it may be possible to raise all the capital required both equity and debt from the community. On a larger multimillion pound project the community might be expected only to raise a percentage of the share capital which the developer requires as equity share capital for the project.

### **Restrictions on a private company raising share capital**

A private company limited by shares is prohibited from issuing its shares to the public under Section 81 of the Companies Act 1985.

Section 81(1) a private limited company (other than a company limited by guarantee and not having a share capital) commits an offence if it:-

- (a) offers to the public (whether for cash or otherwise) any shares in or debentures of the company; or
- (b) allots or agrees to allot (whether for cash or otherwise) any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public

A company guilty of an offence under this section is liable to a fine.

The purpose of this section is to ensure that only offers to the public can be made by public limited companies which have a minimum share capital of £50,000. The intention behind the legislation is that people should not invest in companies unless they are properly informed as to risks which are involved and, it is thought necessary that the company should be of a certain size before it attracts investment from the public.

A private company may not be offering shares to the public if it offers shares to the members of an investment club. Whether it is, or not may depend on whether the issue is restricted to Club members or not.

### **Financial Promotions**

A further problem is that the issue of any financial promotion (investment advertisement) inviting a person to invest in a company is an activity which may require authorisation under the Financial Services and Markets Act 2000 (FSMA). In addition, if an offer to the public is made by a company and it is required to issue a prospectus, that prospectus must comply with the Public Offers of Securities Regulations 1995 which sets out the detailed requirements for the contents of that prospectus.

These restrictions can make it very difficult for small private companies to raise capital other than from investment grants or calling upon a few friends and family from existing companies or experienced investors.

In recognition of this, there are exemptions under the Financial Services and Markets Act for persons who receive an offer to invest through a company established to support enterprise (an investment club).

## **Regulated Activity**

It is not possible for the investment club to be a corporate body or other person which makes a business out of putting individuals in contact with a company which is seeking investors. This would be a regulated activity under the Financial Services and Markets Act ("FSMA"). Section 19 of the FSMA creates a general prohibition that no person may carry on a regulated activity in the United Kingdom unless that person is an authorised person or an exempt person. This is what the Act calls the general prohibition. One of the regulated activities is arranging deals in investments (Schedule 2 paragraph 2 FSMA).

The way in which an investment club would carry on a regulated activity would be by passing on information about a company which is seeking investment to a member of the investment club. Section 21 of the FSMA prevents a person, in the course of business, from communicating an invitation to engage in an investment activity unless the investment club is an authorised person or the content of the communication has been approved by an authorised person unless a relevant exemption applies.

## **Exemption from FSMA**

There is a specific exemption from the FSMA designed to assist the development of commercial and industrial enterprise. This exemption is designed with local enterprise agencies in mind and is also applicable to investment clubs. Article 5 of the FSMA 2000 (Exemption) Order 2001 provides in paragraph 40 of the schedule to those regulations that a body involved with enterprise may be exempt from the regulated activities of arranging deals in investments.

The exemption in paragraph 40 of the schedule is as follows:

- (1) "Any body corporate which has as its principal object (or one of its principal objects):-
- (2) The promotion or encouragement of industrial or commercial activity or enterprise in the United Kingdom or in any particular area of it; or

- (3) The dissemination of information concerning persons engaged in such activity or enterprise or acquiring capital income so engaged;

is exempt from the general prohibition in respect of any regulated activity of the kind specified by Article 25 of the Regulated Activities Order (arranging deals in investments) so long as it does not carry on that activity for (or with the prospect of, direct or indirect pecuniary gain).

- (2) For the purposes of this paragraph, such sums as may reasonably be regarded as necessary to meet the costs of carrying on the activity mentioned in sub-paragraph (1) do not constitute a pecuniary gain."

There are three essential requirements of this exemption.

- (1) The Company must ensure that the objects clause in its Memorandum of Association contains appropriate wording in accordance with the section. It is therefore sensible to limit the powers of the Company so that it ensures that it does not accept monies which are in contravention of the requirements of the regulation.
- (2) The Company ought to be a company limited by guarantee and not having a share capital since it should be a non-profit making company designed to assist industrial or commercial enterprise.
- (3) The Company may charge a fee for providing a service of linking a company's own investors but it cannot itself invest in a company and cannot profit out of the arrangements which it is making.

The Investment Club is entitled to make or direct an investment communication to be made and such communication is not treated as a financial promotion pursuant to Article 16 of the FSMA 2000 Financial Promotions Order 2001. This states:

### **"Exempt Persons**

The financial **promotion** restriction does not apply to any communication which:

- (a) is a non-real time communication or a solicited real time communication;
- (b) is made or directed by an exempt person; and

- (c) is for the purposes of that exempt person's business of carrying on a controlled activity which is also a regulated activity in relation to which he is an exempt person."

The Relevant Firm which seeks to publish information to members of the Club must also ensure that its investment communications are authorised or exempt. This applies to both written and oral communications. An exemption for written communications which may be helpful is contained in paragraph 28 of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2001. This applies to a one-off communication issued by a company which is not part of a marketing campaign for investment by that company.

Relevant Firms should seek advice that its communication will be lawful before issue.

### **Explanatory Statement in Investment Communication**

The former exemption under the Financial Services Act 1986 used to require that two statements should be included in the investment communication provided to members of the Club. These were:-

- (1) "Investment in new business carries high risks, as well as the possibility of high rewards. It is highly speculative and potential investors should be aware that no established market exists for the trading of shares in private companies. Before investing in a project about which information is given, potential investors are strongly advised to take advice from a person authorised under the Financial Services Act 1986 who specialises in advising on investments of this kind.
- (2) The second statement came from the company that was seeking investment. This was "the persons to whose order this investment advertisement has been issued have taken reasonable steps to ensure that the information it contains is neither inaccurate or misleading."

Whilst these statements are no longer required, the Club considers that it is still good practice to include these statements and such statements amended to comply with the Financial Services and Markets Act 2000 are set out below.

One of the purposes of the regulation of investment communications is to ensure that unsophisticated investors have appropriate information from which they can make an investment decision. This information should be obtained by the Investment Club from the relevant company concerned. The other concern of the regulations is to permit investment in new enterprise or

community initiatives provided that sufficient investment health warnings are given. It should be noted there are serious criminal penalties for the directors of organisations who permit investments to be offered or issued which are in breach of the FSMA.

## **Attracting members to the Investment Club**

The Investment Club will need to attract persons into membership of it. It will therefore need to publicise its proposed activities and provide a membership pack which sets out information about investing in unlisted companies and the risks attached to such investments. It may need to have an investors' newsletter detailing information about possible investments. It may also have meetings at which investors discuss the type of investments in which they are interested and learn about the risks and rewards of making investments.

A renewable energy company which is seeking community involvement may hold information received from the Investment Club and direct persons to the Investment Club. The Investment Club can also provide information to the public that it is seeking to find people who are interested in making unlisted investments in private companies. Since the Investment Club is an exempt person it is therefore entitled to make these communications.

People contacting the Investment Club can be given an information pack which informs them of the risks in investing in private companies and how the Investment Club intends to operate.

## **Sample Information Leaflet**

### Information Sheet for Members

#### The Renewable Energy Investment Club Limited

The Renewable Energy Investment Club Limited (REIC) was incorporated on 11<sup>th</sup> September 2001. Its objects are:

To carry on the business of a club by providing for the use of its Members information concerning persons engaged in Industrial and Commercial Enterprise in the United Kingdom.

To promote commercial activities in the United Kingdom particularly through encouraging investment in organisations which conduct their business in a socially responsible manner in accordance with such criteria as may be laid down from time to time by the Directors of the Club.

To encourage primary and secondary markets in relevant firms and securities by:

- (a) distributing information and investment advertisements to Members on behalf of relevant firms and other members; and
- (b) arranging investment deals between Members and relevant firms.

### Relevant Firm

A Relevant Firm under the Memorandum of REIC is an organisation which is engaged in business involving the generation, transmission and distribution of renewable energy, the manufacture, installation and operation of renewable energy equipment and any other business connected with the development of renewable energy.

### Purpose

The purpose of the Club is to put members of the club who are interested in making investments in unquoted companies in contact with those companies which have informed REIC that they are looking for capital.

### Non Profit Making

The Club is non-profit making and does not itself make investments in any company nor does it intend to make any profit from putting companies into contact with its members.

### Club Membership Fees

The Club is entitled to charge its members a membership fee which is set by the Board of Directors of REIC from time to time.

More information about the Company is set out in the Company's Memorandum and Articles of Association which can be obtained from the Company Secretary at the address listed below.

### How the Club Works

The Club will receive information regarding renewable energy companies from time to time which are looking for capital.

The Club has created a list of information requirements which it thinks companies should fulfil in providing information to members of the club. A company who seeks investment through the club is asked to provide the information required by the club. See Company Info.

If the Directors of the club are reasonably satisfied that the information which has been provided is complete and that the company falls within the objects of the club as a relevant firm engaged in the renewable energy industry then it will release a summary of the information provided by the company to members. The Club will request members who may be interested in the investment to contact the Club so that this

information can be passed to the Published Relevant Firm. The Published Relevant Firm will supply an Information Memorandum to those members. The Club may also arrange a meeting for members of the club with directors of the relevant company.

### Liabilities of the Club

The Club does not accept any responsibility for the accuracy of the information supplied to it by companies and Club members must rely on the information supplied by the company itself and any enquiries which they make of the directors of the Relevant Firm.

Each investment communication issued by the club will contain the following statement:

"Investment in new business carries high risk as well as the possibility of high rewards. It is highly speculative and potential investors should be aware that no established market exists for the trading of shares in private companies. Before making an investment about which information is given, potential investors are strongly advised to take advice from a person authorised under the Financial Services and Markets Act 2000, who specialise in advising on investments of this kind.

The investment to whose order this investment has been issued have taken reasonable steps to ensure that the information it contains is fair, clear and not misleading."

It is important that members understand these statements. The Club wishes to underline that people should only make investments through the Club if they have considered their own financial circumstances and understand that they may be risking all monies which are invested through Investment Communications arranged by the Club.

Members should also note that since the companies which will be offering investments are, on the whole, private companies that there will be no ready market for the shares of that company. This means you may not be able to sell your shares easily.

### Market of Shares in Relevant Firms

The Club is entitled to keep a list of members who hold investments in relevant firms and club members are entitled to see these lists and make offers to purchase the shares of such members.

The Club will provide no advice regarding the price at which shares of relevant firms should be bought or sold.

### How the Club is Managed

There are two founder members of the club, Dulas Limited, a company specialising in the renewable energy industry, and Groundwork

Bridgend, a charity. These two companies have procured or provided initial funding of the club for its first twelve months of operation.

The founder members have the right to appoint up to six directors of the company up to the second Annual General Meeting of the Club. From the third Annual General Meeting of the Club one third of the directors will retire and become eligible for re-election.

#### Non Payment of Subscriptions

In the event of non payment of any subscriptions unless the directors excuse payment of that member's subscription for such period as they think fit, the member will cease to be a member 56 days after the subscription became due.

#### Advisory Counsel

The Board may appoint an Advisory Counsel of not more than seven persons. The purpose of the Advisory Counsel is to provide information to the Board on the operations of the club. The Advisory Counsel may also request from the Board on how they are operating the activities of the club except in respect of anything which are confidential. The club believes that this is a useful way of bringing expertise to assist the Board in the future development of the club. The current members of the Advisory Counsel are:

[ ].



## Guidance to Relevant Firms on information to be provided to Members of The Renewable Energy Investment Club

The following information is required by the Club by way of an Information Memorandum to be given to members of the Club:

### General Requirements.

The name of the company and the address of its registered office

The names and functions/backgrounds of the directors of the relevant firm.

The date of the Information Memorandum.

The Statement "Investment in New Business Carries High Risk as well as the possibility of High Rewards". It is highly speculative and investors should be aware that no established market exists for the trading of shares in private companies. Before making an investment about which information is given, potential investors are strongly advised to take advice from a person authorised under the Financial Services and Markets Act 2000, who specialise in advising on investments of this kind.

The directors of [*name of company*] have taken reasonable steps to ensure that the information contained in this Information Memorandum is fair, clear and not misleading.

A statement by the directors of the relevant firm that the information contained in the Information Memorandum is in accordance with the facts and that Information Memorandum makes no omission likely to effect the meaning of such information and accepts responsibility for the Information Memorandum accordingly.

### General Information about the Relevant Firm

The date and place of incorporation and its registered company number.

The legal form of the company and the legislation under which it was formed and if different the legislation now applicable to it.

A summary of the objects contained in the company's Memorandum of Association. REIC will expect a copy of its Memorandum and Articles of Association to be lodged with it.

The amount of the relevant firm's authorised share capital.

Any limit on the duration of the authorisation to issue such share capital.

The amount of the issued share capital.

The amount of any outstanding loan stock or bonds issued by the company and whether such securities are convertible into shares and, if so, the amount of share capital into which they would convert.

Information about whether the company has a subsidiary trading company or is a subsidiary of a holding company.

Information about the existing shareholders of the company and the proportion of the issued share capital which they hold.

The principal activities of the relevant firm

A description of the relevant firm's principal activities and of any exceptional factors which have influenced its activities.

Information regarding investments in progress where they are significant.

A statement of any dependence of the relevant firm on patents or other intellectual property rights, licences or particular contracts where any of these are of fundamental importance to the relevant firm's business.

Information on Litigation

Information on any legal or arbitration proceedings or claims active, pending or threatened against the relevant firm or being brought by it which are having or may have a significant effect on its financial position.

Financial Position

A summary of the relevant firm's audited annual accounts setting out the profit and loss balance sheet for the previous three years together with material notes in respect of those accounts.

The relevant firm will also be expected to submit the audited accounts in full to REIC including the Directors and Auditor's Report.

If any of the three years accounts have not been audited the Information Memorandum should contain a statement to that effect.

If the relevant firm has not been in existence for the whole of the last three years then it should provide some information referred

to above in respect of the audited information which is available and contain unaudited information in respect of that period which has not been audited.

Financial information should be provided to a date which is no later than three months from the date of the Information Memorandum.

The name and address of the auditors of the relevant firm should be given.

Where unaudited information is provided the relevant firm should seek to obtain a report by a person qualified to act as an auditor which includes, where relevant:

- details of the profit or loss of the relevant firm in respect of the period beginning with the date of commencement of trading or the date of its last audited accounts and ending on a date not more three months before the Information Memorandum and of its state of affairs and its balance sheet at that date; and
- if possible, a statement by a person responsible for the Report that in her/his opinion it gives a true and fair view of the state of affairs and profit or loss of the relevant firm and that she/he consents to the inclusion of her/his report in the Information Memorandum and accepts responsibility for it or a statement where she/he is unable to make such a statement.

## Management

A description of the directors existing or proposed Employment Contracts excluding contracts which may be determined by the relevant firm without payment of compensation within one year.

The total remuneration paid and benefits in kind granted to the directors of the relevant firm during the last completed financial year together with an estimate of the aggregate amount payable of benefits in kind to be granted to the directors and proposed directors for the current financial year.

The interest of each director in its share capital.

## Recent Developments in the Relevant Firm's Business and Prospects

The significant recent trends concerning the development of the relevant firm's business since the end of the last completed financial year.

Information on the relevant firm's prospects for at least its current financial year and if possible for a period of three years.

Taxation Information regarding whether the relevant firm's shares are eligible for the Enterprise Investment Scheme and the tax effect of that for investors. If a company suggests that it will qualify for EIS, it should not give illustrations of projected financial returns for investors.

#### Investment Sought

- Amount of Investment Sought
- Minimum amount from any investor

Costs associated with raising capital.