



Creating and operating a successful fire trading company

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Agenda

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- Deciding to set up an FTC
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- Trowers & Hamlins LLP – legal issues

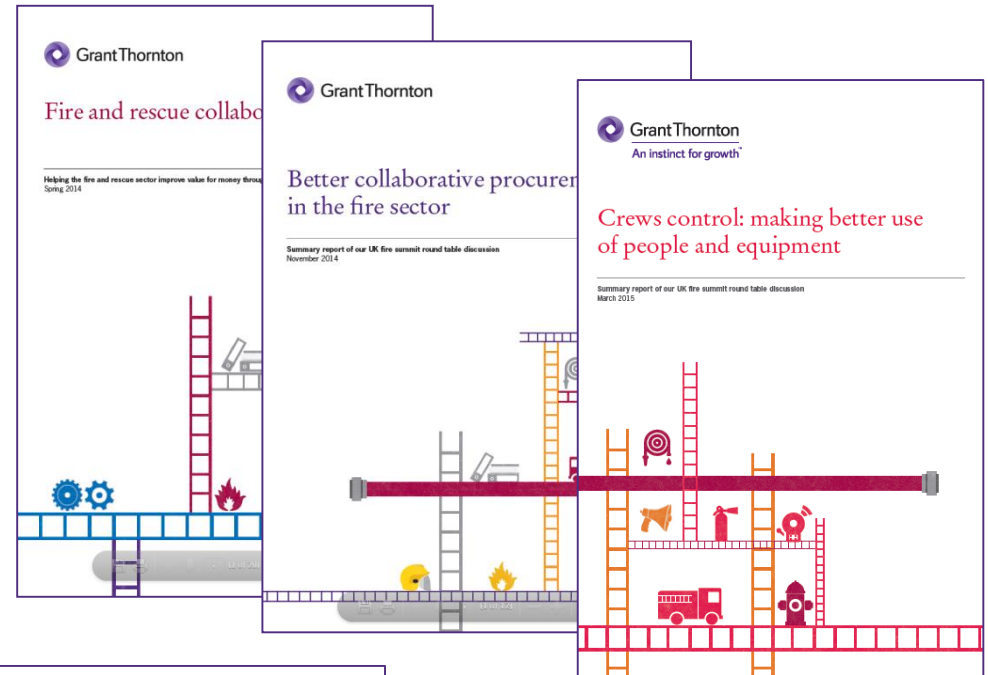
Introductions

- A collaboration
- Why the guidance was commissioned
- Who was involved
- What we hope to achieve



About Grant Thornton

- Leading firm in local government, fire and police audit/advisory services
- Currently working with 20 Fire Authorities
- Specialists in advising public sector bodies on alternative delivery models across the country
- Investing in the sector through thought leadership



Scope

Our guidance:

- covers the full life cycle of a Fire Trading Company (FTC)
- considers our research into FTCs
- legal powers and framework
- good practice and key considerations:
 - governance
 - staff
 - branding



Why are FTCs being set up?

- Austerity – adapting to address the funding crisis
- Greater commercial freedoms
- Generate income and utilise spare capacity
- Social return

Fire Trading Company – a generic term used to refer to any company established as a separate legal entity either by an FRA or following an options appraisal by an FRA, regardless of its legal structure or the level of ongoing control or involvement of the FRA post-incorporation

Deciding to set up an FTC

- FRA needs to be clear on what it wants to achieve and why
 - Is a separate legal entity required?
 - Should it have social and community objectives as well as commercial?
- Effective business planning is paramount
 - Begin with an options appraisal
 - Outline business case to full business case

Deciding to set up an FTC

The following should be considered:

- market
- financial support
- equipment and premises
- branding, name, logos and uniforms
- back-office services
- people

Ensure the income stream and supporting market is sustainable
FTCs must be financially viable, whether their intended purpose is commercial ('for-profit') and/or social ('not-for-profit')

Creating an FTC

Once approval has been provided by the FRA then the company can be established.

We found that FTCs were most likely to be established as:

- Companies limited by shares
- Community Interest Companies limited by guarantee

Consider who should be on the Board, members of the FRA operational staff from the FRS?

Do not underestimate the work involved to set up and become operational
Up to 18 months and resources will be required to fund the process

Running a successful FTC

Develop and maintain commercial acumen and culture

The governance structure should facilitate the development of the FTC

- for the FTC – agree the board composition and chair. Select on skills required
- for the FRA – striking the right balance between influence and control to enable the company to operate effectively and at arm's length.

A successful company needs to be dynamic and flexible to be able to adapt to the changing market and environment in which it finds itself.

About Trowers & Hamlins LLP

- Full service city & international law firm offices across UK
- Consistently ranked top tier in legal directories for local government, procurement, public and administrative law
- Established & advised on hundreds of companies for public and private sector clients



Legal overview

- FRA Powers
- Company Law
- Employment Law
- Intellectual Property
- State Aid

FRA Core Functions

- Core functions are set out in FRSA 2004 Part 2
- FRAs' powers are **linked** to functional purposes plus “incidental” and “indirectly incidental” to core functions
- Some core functions are expressed to impose a statutory duty on a FRA in “its area”
 - For example: Section 7 – Firefighting

FRA powers

- Complex and ambiguous legislation, due to FRSA 2004 being later amended by Localism Act 2011
- FRAs may:
 - Carry out their **functional purposes**
 - Do things **incidental or indirectly incidental** to their functional purposes
 - Do things connected with any of their functions
 - Do (for commercial purposes) what they may do under the above other than for commercial purposes
 - Powers are **in addition to**, not limited by other powers of the authority
 - Charge for activities where FRSA expressly allows and subject to FRSA restrictions

Company Law

- Choice of corporate entity
- Profit-making or non-profit?
- Commercial purpose?
- Company limited by shares or by guarantee?
- Limited Liability Partnership
- Shareholders' / Members' Agreement
- Funding / financing options

Employment Law

- How will individuals be deployed?
- Working for the FRA, FTC, or both?
- How will time / duties be apportioned?
- Are additional / new duties envisaged?
- For example:
 - Marketing
 - Business development

Intellectual Property Rights

- Important considerations, even before company formation:
 - Company name
 - Logo and branding
 - Trademarks
- This all feeds into the marketing strategy, so vital to get it right prior to launch

State Aid

- Potential for challenge where an FTC is supplied with loans/staff/assets for less than “market value”
- Current rules are derived from EU legislation and likely to remain similar post-Brexit
- However, enforcement will move from the EU to UK Competition and Markets Authority
- Private sector increasingly interested in bringing challenges in this area.

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