

Local Authority Trading Companies and Teckal

APSE Seminar 2013

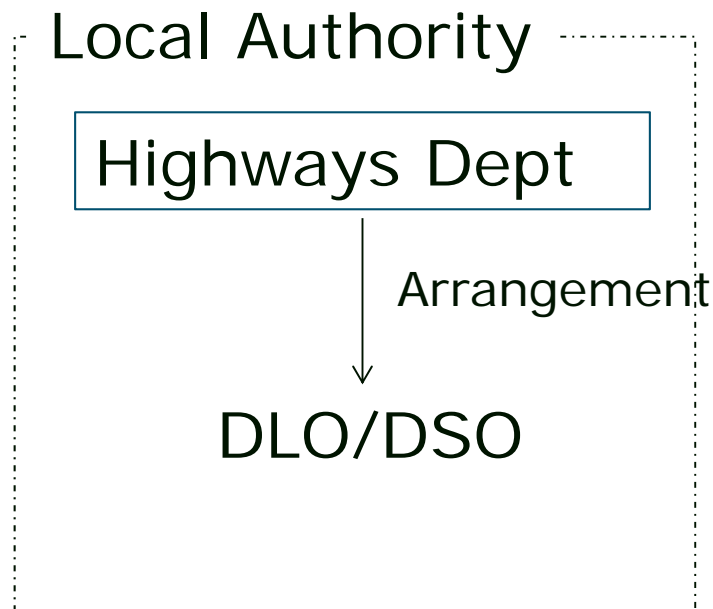
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Overview of session

- Today's objectives
 - the current position - background
 - the draft new Directive
 - Impact on trading companies
 - Trading companies – more or less attractive
 - Defining 'entity' and 'control'
- Summary

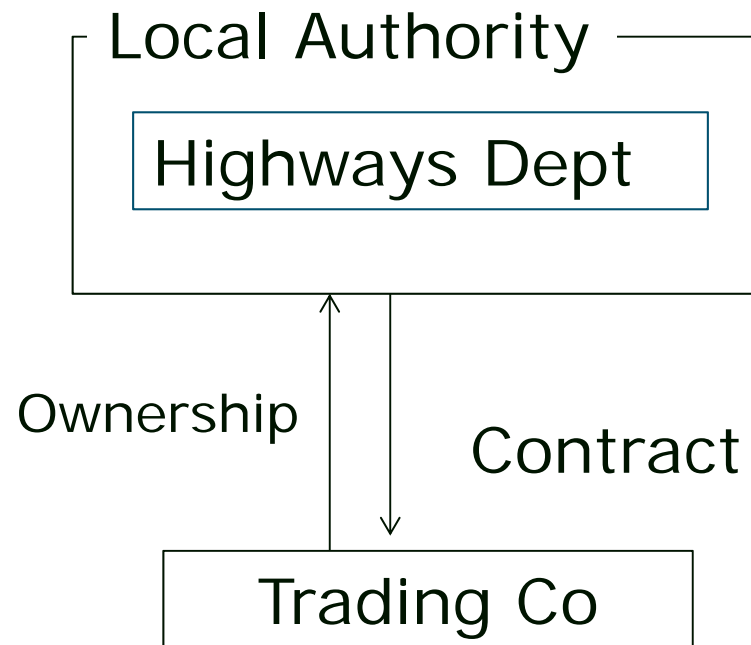
Background (1)



In-house arrangements

- Procurement applies to a **Public body**
- Purchasing **works, goods or services**
- Through a ~~contract in writing~~
- for **consideration (whatever the nature of the consideration)**
- Above the relevant **threshold**
- That is not otherwise **exempt or excluded**

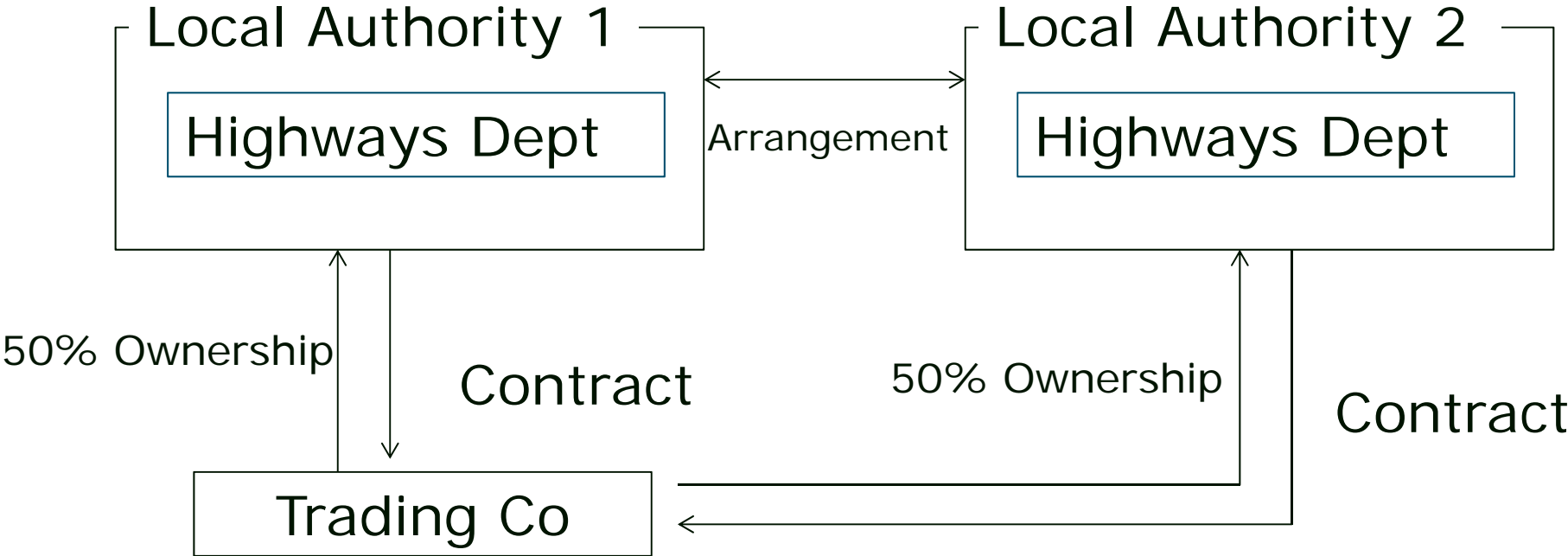
Background (2)



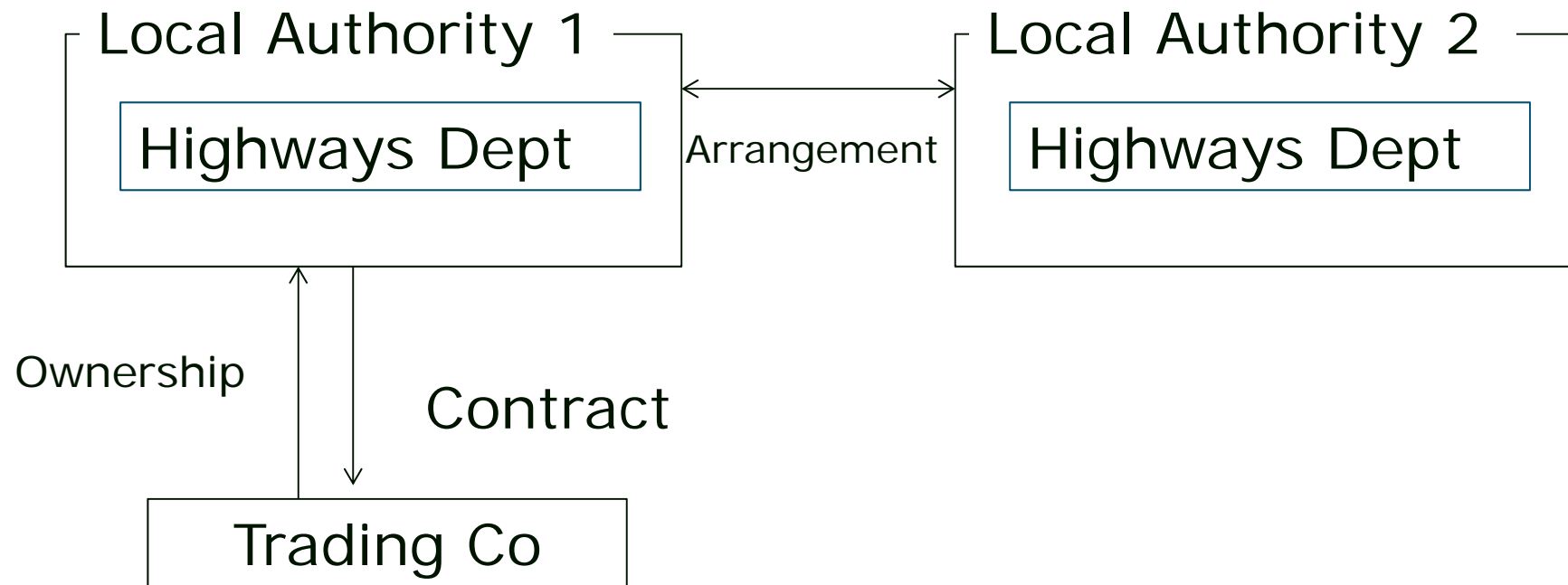
A Teckal arrangement

- Contract with a legal person but meeting control and activity test:
 - control exercised similar to that over own departments
 - essential part of its activities for the controlling authority
 - no private participation

Background (3)



Background (4)



Draft EU Directive (1)

- Where
 - control exercised similar to that over own departments
 - more than 80% of activity for the owners (turnover for services in last three years will be considered)
 - no private participation in the entity
- Values based on actual values or business projections

Draft EU Directive (2)

- Multi-party owners acceptable provided:
 - all parties represented at decision making body (can be represented by another co-owner)
 - jointly exert decisive influence over strategic objectives and significant decisions
 - entity doesn't pursue interests distinct from those of controlling owners
 - no revenues from owners other than reimbursement or re-allocation of funds for activity performance (i.e. no profit for any lead body)

Draft EU Directive (3)

- Where Teckal control isn't exerted but these cumulative conditions are met:
 - a framework of genuine co-operation aimed at jointly carrying out public tasks involving mutual rights and obligations
 - implementation governed solely by public interest considerations
 - the parties perform less than 20% of the activities on the market in the activities concerned
 - no financial transfers except reimbursement or reallocation of funds for the activities
 - no private capital participation in the co-operating authorities

Impact on the award of contracts to local authority trading companies

- April 2010 Commission review
- January 2011 Green Paper
- June 2011 Responses to Green Paper
- December 2011 Draft Directive
- November 2012 Revised Draft Directive
- April 2013 Council Working Party
- September 2013 European Parliament first reading
- Adoption 2013/2014?
- UK Implementation 2015/2016?

Will the new directive make local authority trading more or less attractive

- Delegation/arrangement for discharge of functions
- Shared service (Teckal)
- Co-operation (Commission v Germany)
- Inter public contracts

Defining 'entity' and 'control'

- Entity must be a separate legal body to the Authority:
 - Company
 - Limited Partnership
 - Limited Liability Partnership
 - Statutory Corporationbut
 - Note horizontal arrangements are not subject to the same limitation
- Control defined as:
 - the exercise of decisive influence over both strategic objectives and significant decisions

Conclusion

- We've referenced:
 - the current position
 - the draft new Directive
 - the impact on trading companies
 - why it remains unknown as to whether they are more or less attractive
 - considered some of the defined terms
- The implementation remains some way off
- The only thing we can say with certainty is that the Draft Directive is certain to change
- Current 'case law' prevails

Questions???



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