



The Growth Fund – Execution Process, including the legal agreements

Guidance on the process, post approval by the JIC and signing of the
legal agreements

Where is the execution phase in the process?

STAGE 0:
Social Investor expresses interest via EOI

STAGE 1:
Social Investor provides business case to Access (after being invited to apply)

STAGE 2:
Following JIC approval, due diligence of application by Access and BSC

STAGE 3:
Signing of all legal agreements

ONGOING:
Monitoring of activities

Invited to apply if eligible & suitable

1ST formal committee decision

2ND formal committee decision

Expression of Interest (EOI) form received

Business plan received

Assessment, Due Diligence

Legals

Ongoing Monitoring

Initial consideration of eligibility of social investor by Access. If successful, invited to apply.

Review strategic fit with Growth Fund. Proposal to include: market gap; proposed solution; social impact; track record; risks; benefits to the market

JOINT INVESTMENT COMMITTEE (JIC) INITIAL ROUND

Validate info and dig deeper into Business Plan. Consider key issues raised by JIC, including any State Aid issues

JIC FINAL ROUND

Loan agreement signed between BSC & social investor; Agreement between Big Lottery Fund & social investor; Incorporate legal entity to manage funds

Disbursing funds; Quarterly reporting; Course correction based on performance and experience; Portfolio reviews with JIC

Once the JIC has approved the proposal and the offer has been made to the social investor, there are a number of important steps before the contracts can be signed between the relevant parties and the first of the funds transferred – this phase is known as **Execution**.

OPERATIONAL CONSIDERATIONS FOR THE SOCIAL INVESTOR

- Incorporating a new company from which to run the fund (a wholly-owned subsidiary of the social investor)
- Setting up the necessary bank accounts
- Ensuring the necessary team(s) are in place
- Developing the investment manual outlining the fund's processes
- Developing a Service Level Agreement (SLA) between the subsidiary & the social investor clarifying the expectations of each
- Clarifying how any State Aid issues will be managed

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LEGAL AGREEMENTS TO BE SIGNED

- An External Delegation Agreement (EDA) for the Big Lottery Fund to delegate their grant making authority to the Social Investor
- A Loan agreement with Big Society Capital (and any co-funder)
- A Share Charge which allows the lender(s) to take security over the subsidiary company which will manage the fund
- The SLA between the subsidiary and the Social Investor
- A Deed of Priority may also be required if there is a co-funder or if other lenders have taken security over the Social Investor

EXECUTION

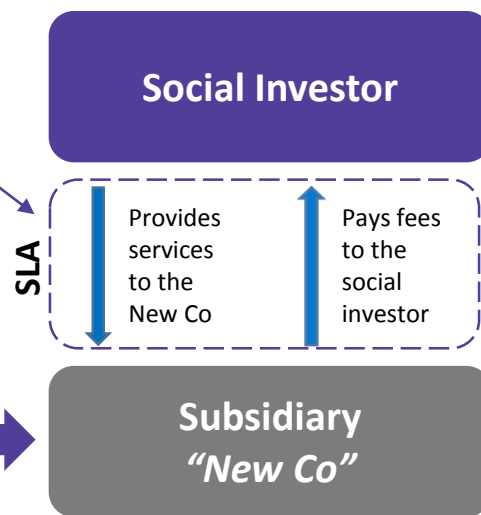
What is the structure that the legal agreements govern?

▶ All social investors who apply to the Growth Fund are required to set up a wholly owned subsidiary. Usually this is a company limited by shares or a community interest company (CIC) limited by shares. This subsidiary (referred to here as “New Co”) will manage the fund and the legal agreements are mostly between the funders and the subsidiary. There are however, a number of agreements that the social investor is also party to. By incorporating a separate company:

- The social investor and its other assets are protected as BSC (and co-investor, if applicable) only has recourse to the New Co;
- Monitoring of the grant is easier because it is fully separated; and
- BSC (and co-investor, if applicable) can easily take security through a Share Charge over the share(s) of the subsidiary.

The structure can be represented as follows:

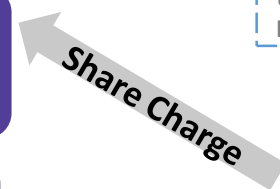
The relationship between the **Social Investor** and the **New Co** is governed by a **Service Level Agreement (SLA)**. While the operations of the fund are ring fenced in the subsidiary, the social investor provides the services to run the fund and the New Co pays fees to the social investor in return.



The Big Lottery Fund



Grant funding from the Big Lottery Fund is governed by an **External Delegation Agreement (EDA)**. This is **signed between the Big Lottery Fund and the New Co**.



A **Share Charge** allows the lenders to take security over the New Co. It is **signed between Big Society Capital and the Social Investor** (and any co-investor if applicable)

Other potential lenders
ABC Bank

In certain cases, a **Deed of Priority** may be required if the Social Investor needs to get agreement from other lenders who may have taken security over them. It is **signed between Big Society Capital and the other Lender**.



Big Society Capital



Loan financing from Big Society Capital is governed by a **Loan Agreement**. This is **signed between Big Society Capital, the New Co, the Social Investor and Access** (and any co-funder if applicable).

What is the grant agreement with the Big Lottery Fund?

- ▶ The Big Lottery Fund provides grant funding under the Growth Fund. An **External Delegation Agreement (EDA)** is signed between the Big Lottery Fund and the New Co. This delegates the Big Lottery Fund's grant making authority to the New Co in relation to these funds. The **EDA refers to the New Co as "delegate"** because the EDA delegating its grant making authority to the New Co.
- ▶ The EDA is a legally binding document and the body of the agreement is accompanied by 10 schedules which provide more detail on the terms set out in the contract. These schedules form part of the EDA and are also legally binding.
- ▶ The structure of EDA is as follows:

BODY OF THE EDA

The main body of the EDA is a high level overview of the roles and responsibilities of each party to the agreement, with the detail included in the 10 accompanying schedules. The agreement includes (but is not limited to):

- Definition of the terms included in the agreement
- The appointment of the delegate
- The requirement to appoint an accountable officer
- Details of the Grant (expanded in schedule 2)
- Monitoring and reporting requirements (expanded in schedule 5)
- Conflicts of interest
- Audit requirements
- Warranty & Indemnity
- Events of default
- Termination
- Mediation

SCHEDULES

- 1 **Details on the actual scheme**, the standard **grant conditions** of the Big Lottery Fund as well as any specific conditions imposed on the delegate
- 2 **Drawdown and use of the Grant** – details the mechanics of how the grant will be paid to the delegate, including a schedule of operating cost payments, as well as instructions if residual grant.
- 3 **Assessment, Decision Making and Management Process** – Written by the delegate, this includes the processes for: managing complaints, State Aid, managing defaults, managing reporting and monitoring, managing the application and assessment process of applicants.
- 4 **Charities and Social Enterprises Conditions** – includes the minimum conditions the delegate shall apply to each offer of grant or loan to charities and social enterprises.
- 5 **Reporting, Monitoring & Evaluation of the scheme** – details the requirements on the delegate on the data they will need to collect and report on in relation to the fund's operations
- 6 **Promotion of the Scheme** – guidance on how the delegate will advertise and promote the fund, taking into account the needs and requirements of the funders
- 7 **Letter of Appointment of Accountable Officer** – responsibility of the delegate to appoint an Accountable Officer who will ensure the Lottery funds are distributed with due regularity & propriety
- 8 **Statement of Assurance** - statement required from the Big Lottery Fund for the delegate to confirm their systems are adequate for handling Lottery funds
- 9 Joint **protocol of dealing and sharing confidential information** – details the delegate's responsibility in dealing with confidential information
- 10 **Drawdown request** – a template letter of the request to be submitted to Access as and when funds are required

What are the agreements with Big Society Capital?

▶ Big Society Capital provides loan financing for the Growth Fund. There are **two agreements** the New Co (and Social Investor) always need to sign in relation to this loan financing:

- 1 The Loan Agreement** – an agreement that the New Co will borrow funds from Big Society Capital (signed between Big Society Capital, the New Co, the Social Investor and Access, and any co-funder if applicable)
- 2 The Share Charge** – an agreement that the Social Investor will transfer 100% of the shares of the New Co to Big Society Capital in certain conditions. This provides security to Big Society Capital if the loan agreement is breached, e.g. in the case of significant under performance (signed between Big Society Capital and the Social Investor)

▶ In certain cases, a **Deed of Priority** may also be required if the Social Investor needs to get agreement from other lenders who may have taken security over them. It is signed between Big Society Capital and the other Lender.

THE LOAN AGREEMENT

As with the EDA, the main body of the contract is accompanied by four schedules which provide further details of some of the terms and conditions identified in the loan agreement.

The loan agreement includes:

- The terms and quantum of the loan
- The conditions precedent (both on initial drawdown of the loan and subsequent drawdowns)
- The terms of the interest charged and how it is calculated
- Repayment arrangements
- Representations and Warranties
- Covenants (General, Finance and Information)
- State Aid
- Conditions in the event of default

The Four Schedules to the loan agreement are:

1. Conditions Precedent – detailing the conditions precedent referred to in the contract
2. Responsible Business Principles prescribed to by BSC
3. A template of the Drawdown request for funds (as per the EDA)
4. A schedule of operating costs of the New Co (as per the EDA)

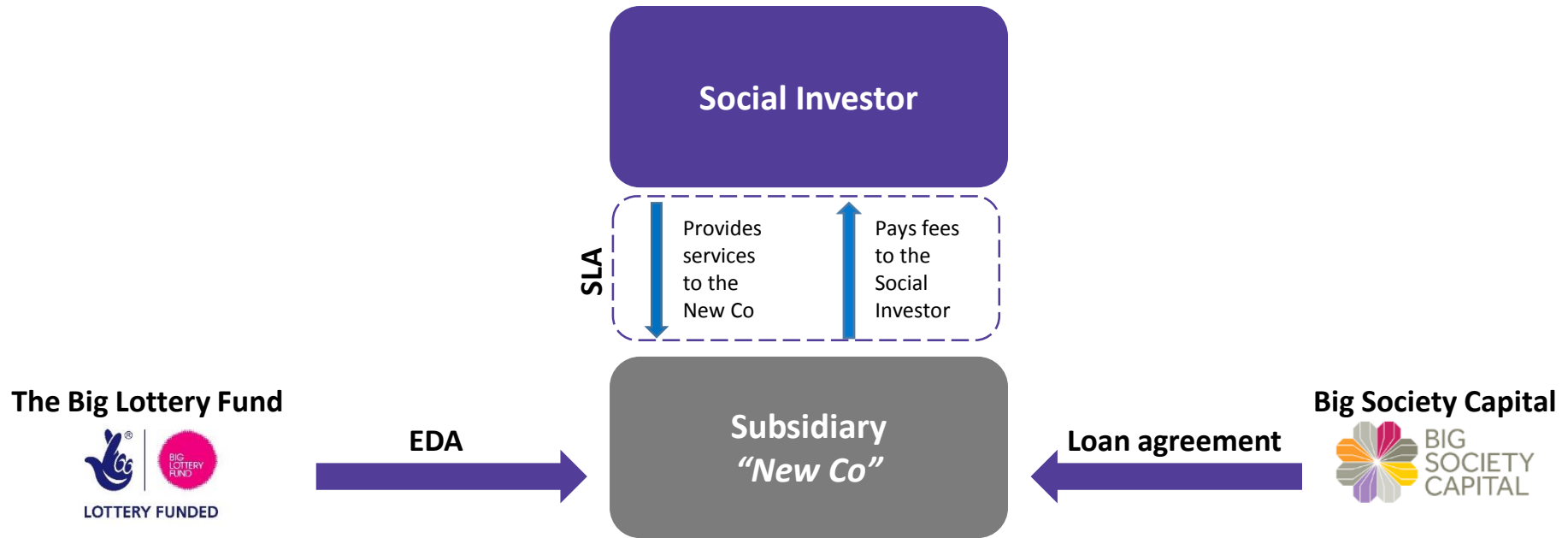
SHARE CHARGE

The Growth Fund requires that a Social Investor set up a wholly owned subsidiary to run the Growth Fund scheme.

The Share Charge is the legal document that enables the Social Investor to transfer the New Co in the event of certain conditions (set out in the Share Charge deed) being met.

Share Charges are usually only enforced in exceptional circumstances, for example significant under performance of the fund as defined in the legal agreements.

What is the agreement between the Social Investor and the Subsidiary?



- ▶ The Social Investor incorporates a wholly owned subsidiary to run the Growth Fund scheme. The EDA is signed by The Big Lottery Fund and the New Co. The Loan agreement is signed by Big Society Capital, the New Co, the Social Investor and Access.
- ▶ In most cases, the New Co won't employ any staff, set up a separate office or infrastructure etc., so it is the parent (Social Investor) that provides these services to the New Co. A **Service Level Agreement (SLA)** is therefore necessary to govern this relationship between the two parties, as well as detail the fees payable to the Social Investor for providing these services. The SLA is signed between the Social Investor and the New Co.

Importantly, the **SLA also passes on all the obligations and deliverables of the New Co** as a result of signing the EDA and the Loan Agreement, **up to the Social Investor.**