“Access to Land for Dairying– New Legal and Tax Models in an Irish Context”

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Glossary

"Collab Farming" – People working together in farming to achieve common goals

CAP – Common Agricultural Policy

CAT – Capital Acquisitions Tax

CGT – Capital Gains Tax

DAFM – Department of Agriculture, Food and the Marine

EARL - L'Entreprise Agricole à Responsabilité Limitée

EU – European Union

GAEC - Groupement Agricole d'Exploitation en Commun

HOSM – Herd Owning Share Milking

MPP – Milk Production Partnership

NZ – New Zealand

SARL – Société à Responsabilité Limitée

SCEA – Société Civile d'Exploitation Agricole

SD – Stamp Duty

SFP – Single Farm Payment

UK – United Kingdom

VOSM – Variable Order Share Milking

Please note that in this report every word importing the masculine gender shall be construed as if it also imported the feminine gender and vice versa and every word importing the singular shall be construed as if it also imported the plural and vice versa

I. Executive Summary

Introduction

With the abolition of milk quotas and reform of the CAP system in 2015, it is anticipated that dairy farming in Ireland will be revolutionised. While this has the capacity to threaten some farm enterprises including existing dairy enterprises, it equally has the capacity to bring about fantastic opportunities for dairying in Ireland. Land ownership is difficult to secure in Ireland. Accordingly, farmers and policy makers are looking at alternatives to land ownership through collaborative farming ventures ("Collab Farming"). These alternative structures may prove viable in the context of the Irish agricultural industry in a way that facilitates expansion through the sharing of resources such as land, stock and finance.

Aims/Objectives

The aim of the study was to look at ways to facilitate expansion in dairying through access to land and capital. The report seeks to identify current operating structures and to recommend alternative operating structures which have the potential to give access to land and capital for new entrants and existing dairy farmers. The report seeks to recommend changes required from a legal, tax and policy perspective to enable these alternative operating models to be utilised in an Irish context.

Methodology

The author is a practicing solicitor, taxation consultant and qualified young trained farmer who practices solely in agricultural law and taxation. Further, the author comes from a dairy farming background, her family having won awards for farming including Creamery Milk Supplier of the Year, Family Farm of the Year and an Environmental award. As well as running a low cost grass based dairy enterprise, her family operate a conference centre which provides educational farm tours for national and international visitors alike. Given her professional and practical background, the author liaised with an array of industry stakeholders at home and abroad in New Zealand, USA and mainland Europe. These included professional bodies (Law Society of Ireland and the Irish Tax Institute), farmers, solicitors, accountants, bankers, economists, university professors, agricultural consultants/advisors/researchers and representatives of farming lobby groups. All of these have made contributions in developing and implementing various farming operating structures in their respective countries.

Findings

Collab farming is critically important to the sustainable development of farming in Ireland. The current level of collab farming in Ireland is low with 3.8% of SFP applications submitted by joint applicants in 2010. This can be attributed to a number of factors:-

- Younger farmers being unaware and/or uninformed about landowners intentions, concerns and issues relating to land ownership and transfer;
- The main collab farming model i.e. the MPP being over regulated, which is due to a large extent to adherence to milk quota policy;
- The lack of standardised "templates" and mechanisms to establish various collab farming arrangements.

Contract farming works well in the UK and similarly should work well in Ireland. It can be used as an alternative to leasing whereby the landowner will continue to be regarded as a 'farmer' for tax purposes and for the benefit of EU and DAFM schemes. Additionally it can provide opportunity to younger farmers to build equity and to gain experience. Share farming and share milking are complex models to operate and consequently it is unlikely that share farming and/or share milking will have any significant role to play in the future expansion of dairy farms in Ireland.

Equity partnerships work well in NZ and the US and could also work well in Ireland. The model could be used in the context of a dairy farmer, grain farmer, beef farmer, new entrant and outside investor coming together each contributing their unique individual assets, skills and expertise. It could also work to create opportunities outside of the family farm like the Māori example in NZ. This example illustrates how the family farm could be protected by being operated as normal via owner operator structure and any profits derived from the family farm could be invested in another farm/farms operated as equity partnerships. The specimen partnership model could be improved to provide for limited liability for partners and less statutory intervention. The discretionary trust model could be utilised more in a farming situation to protect farming assets in the event of marital breakdown.

There is very little (if any) change required from a legal and tax perspective to implement various new collab farming ventures in Ireland such as contract farming, equity partnerships and limited liability partnerships. These new collab farming ventures can serve to facilitate the expansion of dairy farming in Ireland.

Recommendations

- Farm organisations in conjunction with DAFM need to identify reasons for reluctance to make land available for collab farming arrangements through individual interviews with farmer landowners at time of completion of SFP applications;
- Macra / Agricultural Colleges need to educate younger farmers about older farmer landowners intentions, concerns and issues relating to land ownership and transfer;
- DAFM / Teagasc should assess the availability of funding from the EU for a project on collab farming ventures similar to that undertaken by the Dairy Development Centre for Wales (DDC);
- Teagasc / IFA / Macra / Professionals need to form a Collab Farming Representative Group to lobby and educate;
- Teagasc / IFA / Macra and Professionals need to come together and make available templates, practical guidance / operational tips and standardised information on legal and financial structures for an array of collab farming arrangements;
- Teagasc to carry out research into the level of scale and profitability required in order to make the different operating structures viable.
- Teagasc / Macra / Agricultural Colleges need to develop a ladder of progression for young farmers including strategic planning tools, which will enable young farmers to design their own pathways to success.

II. Introduction

*"There are three ways to farm o*wnership: matrimony, patrimony or parsimony. Matrimony is through marriage, patrimony is through inheritance and parsimony is by being miserly. To say that going to work on a dairy farm will always lead to ownership is a myth. It will only happen if the *person has the ability and right approach".* Professor Nicola Shadbolt, Massey University & Fonterra Director, NZ.

The author is a practicing solicitor, taxation consultant and qualified young trained farmer who practices solely in agricultural law and taxation. Through her professional role and interaction with industry representatives to include government departments, farming lobby groups and farmers themselves, the author noted that the availability of suitable land at sustainable prices to increase production and achieve economies of scale is an ongoing issue for dairy farmers.

Dairy farming in Ireland is said to have become stagnated by the introduction of milk quotas on 2 April 1984. However, it is planned that milk quotas will be abolished with effect from 1 April 2015. The Common Agricultural Policy is due to be reformed which will impact on the entitlement of farmer's to Single Farm Payment and other EU subsidies. The changes to the CAP are expected to take effect from 1 January 2014. It is anticipated that these changes will revolutionise Irish farming in the coming years.

Given the challenges and opportunities facing the agricultural industry, the Department of Agriculture, Food and the Marine (DAFM), in consultation with relevant stakeholders compiled a report entitled "Food Harvest – a vision for Irish agri-food and Fisheries 2020" (DAFM, 2010). This report highlights the need to accelerate the restructuring process at farm level and includes the recommendation that "Any remaining obstacles to partnership formation or other new models of farming should be removed". In a Teagasc paper on the capacity to expand milk production it is stated that the ability of farmers to acquire land that is accessible to the milking parlour will be a limiting factor in achieving the target of a 50% increase in national milk production (Laepple, D. and Hennessy, T. 2010). The Department of Agriculture, Food and the Marine ("DAFM") believes that "greater use of the partnership model can not only help to increase scale but can also help to develop the sectors skill set through attracting, in a more meaningful way, new entrants to the sector" (DAFM, 2011a). It is against this highly positive backdrop to encourage change that the study was undertaken.

Land ownership is difficult to secure. Accordingly, farmers and policy makers are looking at alternatives to land ownership through collab farming ventures. Collaboration can be described as people working together to achieve a common goal. These alternative structures may prove viable in the context of the Irish agricultural industry in a way that facilitates expansion through the sharing of resources such as land, stock and finance. While collab farming is not suited to everyone, it has more widespread application than many farmers realise and can be traced back to our ancestors who practiced 'meitheal', the co-operative labour system in rural Ireland, where neighbours helped each other. Collab farming models include farmers working in partnership, contract heifer rearing arrangements and farmer buyer groups.

Alternative collab farming structures which work well in other countries need to be looked such as share milking, contract milking, share farming, contract farming, equity partnerships and companies. In Ireland while the regime of milk production partnerships and land leasing has contributed to the scaling up of dairy farms to achieve increased economic prosperity, this is not always a viable option. The unlimited liability status of a milk production partnership poses a great risk to farmers particularly in these uncertain economic times. In terms of leasing, acquiring additional land of sufficient size to complement an existing compact holding can be difficult and, in the author's experience, the willingness of the lessor to lease it long term is even more difficult to secure. This leaves the farmer in an uncertain position and reduces his willingness to invest or incorporate the licensed or leased land into his existing farming enterprise.

III. Aims and Objectives

Aims

The aim of this Nuffield study is to look at ways to facilitate expansion in dairy farming in Ireland post milk quota (proposed abolition on 1 April 2015). This encompasses three distinct sets of farmers:

1. Young people considering dairy farming for the first time;
2. Existing dairy farmers who wish to scale up post milk quota;
3. Retiring dairy farmers who wish to scale down while remaining in farming.

This study looks at two distinct constraints to expansion namely:

1. Access to Land;
2. Access to Capital

and makes recommendations to facilitate increased access to these resources.

Objectives

- To identify reasons for current lack of access to land and capital for farmers in Ireland;
- To describe current operating structures and outline the progress which has been made on collab farming arrangements in an Irish context;
- To describe alternative operating models used in the dairy industry in other countries and their potential role in an Irish context having regard to current legal and tax obligations under Irish and European legislation
- To recommend possible changes required from a legal, tax and policy perspective in Ireland.

IV. Methodology

At the commencement of the study in January 2011, there was a hugely positive appetite at a policy level for ideas to facilitate change in the area of farm operating structures, which was seen as a factor in achieving the ambitious targets set out in the Food Harvest Report (DAFM, 2010). Accordingly, the author was required to take an active role in such discussions and the year was spent by her networking with industry representatives to include government departments, farming lobby groups and farmers themselves. This gave the author an even greater understanding of the deficiencies in Irish farm structures in terms of age profile, farm size and skill set.

The author was invited to become a member of a working group of the National Rural Network, considering the potential of partnerships to facilitate entry into, and establishment in, farming. The approach taken in the project was to collate existing research, reports and facts on Farm Partnerships and to utilise the experience, expertise and insight of the members of the working group to prepare recommendations for the development of Farm Partnerships. Specific consultations were undertaken with farmers, discussion groups, consultants and Teagasc to complement the information available in existing research and reports. This culminated in a report published by the working group in February 2012 (NRN, 2012).

The author was interviewed and spoke at the open day of the Deise 1250 Dairy Discussion Group, which carried out a project to do further research on agricultural partnerships and/or other structures from the various perspectives of the key stakeholders. The group set out to ascertain the current status of Partnership theories, practice, and beliefs in Irish Partnerships and to develop the ideas and recommendations for the future. This culminated in a report published by the Deise 1250 Discussion Group in August 2011 (Deise 1250, 2011).

The author, at diverse dates during 2011, met individually with, the Chairman of the Food Harvest Report, Dr Sean Brady, the then Head of Milk Policy Division DAFM, Mr. Paul Savage, the Head of Economics and Planning Division of DAFM, Ms. Ann Derwin, the Head of Centre Dairy Production Research at Teagasc, Dr Pat Dillon, and the Head of the Dairy Partnership Registration Office at Teagasc, Mr. Ben Roche.

The author was invited to speak at the Teagasc National Dairy Conference in November 2011 on the topic of Business Operating Models for the Future.

Having gained an invaluable insight into current and future policy in Ireland for farming operating structures, the author set off to investigate whether other structures might have a role to play in future Irish farm business structures. The author focused on the operating structures in the UK and NZ due to the similarity of their legal and tax systems and focused on low cost grass based systems of farming in these countries. The author carried out literature reviews in advance of travels and thereafter arranged meetings with an array of industry stakeholders in the different countries to include farmers, solicitors, accountants, bankers, economists, university professors and representatives of farming lobby groups. All of these have made contributions in developing and implementing various farming operating structures in their respective countries.

Chapter 1

Setting the Scene - Agriculture in Ireland

1.1 Irish Farming Statistics

In analysing what operating structures may facilitate expansion in dairy farming in Ireland, it is important to have regard to the scale and profitability of the average farm across all sectors, particularly dairying, as it currently operates in Ireland.

The Teagasc[1] National Farm Survey (NFS, 2011) reports the following averages for 2011:-

	All Sectors	**Dairying**
Utilised Agricultural Area (UAA)[2]	40.3 ha	54.8 ha
Family Farm Income (FFI)[3]	€24,461	€68,570
Direct payments	€17,929 or 73% income	€23,361 or 34% dairy income
Economically Viable[4]	35%	78%
Economically Vulnerable[5]	34%	12.5%

Figure 1.1 – Teagasc National Farm Survey Results

It is also important to have regard to the current age profile of dairy farmers in Ireland which may influence which type of operating structure may be more readily acceptable.

The following table illustrates the percentage of dairy farmers by age:-

Year	**2000**	**2005**	**2009**
Less than 40 years	25.6	14.5	13.7
Less than 50 years	57.5	47.3	45.7
50 years plus	42.5	52.7	54.3
60 years plus	15.9	21.9	24.9

Figure 1.2 – Central Statistics Office age profile data

[1] Teagasc is the semi-state authority in Ireland responsible for research and development, training and advisory services in the agri-food sector. The authority has a number of county advisory centres, colleges and research centres in which it carries on its work.
[2] Area under crops and pasture plus the area (unadjusted) of rough grazing. It is the total area owned, plus area rented, minus area let, minus area under remainder of farm.
[3] Gross output less total net expenses; it represents the total return to the family labour, management and capital investment in the farm business.
[4] Family farm income is sufficient to cover family labour (remunerated at the agricultural wage rate) and provide a 5% return on non-land assets.
[5] Farm is not viable and neither farmer nor spouse has an-off farm job

The National Farm Survey 2011 (NFS, 2011) reported that the large majority of Irish farms have no business related debt although this varies considerably across farm systems. On average 26% of all farms have business related debt which increases to 50% on dairy farms.

1.2 Access to Land

The vast majority of farms operating in Ireland are family owned and operated farms and have been passed down on a voluntary basis through the generations. Less than 1% of the land area in Ireland is sold annually and each acre of land is estimated to be sold once every 750 years. The level of long term leasing is low. Figures provided by Revenue reveal that a total of 3,230 Irish land owners claimed tax relief in 2010 for signing long term land leases of greater than five years. This represents 7.5% of total rented land (based on 2007 Farm Structure Survey reporting 43,000 farmers renting land each year).

DAFM reports that the current level of farm partnerships in Ireland is very low relative to many of our competitors with 3.8% of applications (4,660) under the 2010 Single Farm Payment Scheme submitted by joint applicants (DAFM, 2011a). Further they report that there are approximately 540 Milk Production Partnerships (MPPs) in existence in Ireland and of this total approximately 390 are new entrant/parent partnerships (72%).

1.3 Factors which Inhibit Access to Land

There is a perception that the main factors which influence land availability are taxation and SFP. However, the writer is unaware of any documented research specifically on this issue in an Irish context. Macra na Feirme in collaboration with the IFA, the Irish Farmers Journal and DAFM have recently initiated a study on ‘Land Mobility and Transfer’, the results of which are expected to be published by the end of 2012. The purpose of this research is to gain an insight into farm succession patterns in Ireland and to develop new policies which could increase the options available to older farmers, encourage more young people into farming and facilitate greater land mobility. In particular the researchers are exploring the extent to which older farmers have identified farming successors. The focus of the survey is farmers (land owners) aged over 50 years. For those who have successors, the survey explores the succession path and issues/concerns. For those with no identified farming successors, the survey explores their intentions, concerns and issues relating to transfer. It is intended to survey (by telephone) a minimum of 400 farmers. The survey data will be complemented with information gathered from 5 Focus Group meetings.

While this initiative has to be welcomed, it appears that the scope of the research will be quite limited. The writer has recommended a more expansive survey and highlighted the importance of getting honest answers from 'older' generation farmers by means of individual discussions between the farmer and a trusted interviewer. This could be achieved by agricultural consultants employed by Teagasc or in private practice who meet with their farmer clients at least once a year to assist in completing SFP and/or REPS forms. The agricultural consultant also tends to be familiar with the farmer clients business and personal circumstances and could direct the 'interview' to get honest answers as to what influences decisions concerning land mobility and transfer.

Professional experience in advising farmers would suggest to the author that tax and SFP considerations are not necessarily the main two factors inhibiting land mobility. For example the low level of long term leasing illustrates that tax incentives alone are not sufficient to encourage long term leasing. Factors which inhibit land availability might include fear of;

- not getting paid rental payments;
- land not being looked after by the lessee;
- the landowner might lose out on SFP entitlements if land is leased out during a 'reference period';
- losing out on Retirement Relief for Capital Gains Tax purposes (subject to specified limited exception where ultimate transfer is to a child)
- different perceptions of acceptable farming methods i.e. older generations idea of maximum stocking rate versus younger generation's idea of 'golf ball' grazing;
- a 'merger' becoming a 'takeover' in the context of forming a partnership;
- legal requirements;
- public perception of failure to being able to manage the family farm by going into business with someone else;
- marital breakdown within the next generation with the divorcee entitled to a share of the farm.

1.4 Access to Finance

Financial institutions operating in Ireland require in the main 30% of the borrowers own funds to be utilised in a transaction and the land to be used as security for the borrowings. Repayment capacity is vital and the farmer needs to demonstrate this to the financial institution through future projections as well as performance in what ever enterprise he may have been operating in the past. Currently chattel mortgages[6] are not available in Ireland. However, a number of financial institutions offer unsecured borrowing packages for young farmers which can give them the same benefits of chattel mortgages.

1.5 Factors which Inhibit Access to Finance

The lack of availability of capital (finance) became increasingly prevalent in the wake of the Global Financial Crisis (GFC). In recent years, the focus has been on reducing debt as was evident from the results of the National Farm Survey which reported that debt levels in the farm sector totalled just under €1.9 billion in 2011, a 14% decrease on the 2010 figure showing a substantial repayment of debt (NFS, 2011).

[6] Under a stock chattel mortgage, the farmer borrows funds for the purchase of the stock from the lender. The lender then secures the loan with a mortgage over the stock.

Chapter 2
Current Operating Structures

2.1 Collab Arrangements[7]

A Teagasc paper, on the economic benefits of working together, reports the positive effects of increasing farm size and the findings are presented in the context of farm partnerships being one of the most cost effective ways of achieving scale (Teagasc, 2009a). In a Teagasc paper on the social benefits of working together, it reports that joint farming ventures can help to address the social unsustainability of the 'one man farm' (Teagasc, 2009b).

On its website[8] Teagasc provides information and specimen agreements on the main collab arrangements being used and encouraged in Ireland as follows:

- Milk Production Partnerships
- Share Farming (mainly suitable for crops sector)
- Contract Rearing of Replacement Heifers.

2.2 Conacre / Lease

Specimen Legal Agreement

A Master Lease of Agricultural Land was produced by AIB and the IFA with the co-operation of the Law Society of Ireland and the Society of Chartered Surveyors of Ireland and is available on the IFA and AIB websites.

Tax Concessions

In order to encourage medium term leasing a tax relief was introduced in the 2007 Finance Act whereby landowners who lease out their land to an unconnected person for a period of 10 years or more qualify for an income tax exemption on rental income of €20,000 per year. In the case of leases of 5 – 7 years the annual rental income tax exemption is €12,000 and for 7 – 10 year leases the annual rental income tax exemption is €15,000. In certain circumstances where a husband and wife are joint lessors, each can qualify for the tax exemption.

Secondly an amendment was introduced in the Finance Act 2007 whereby if a landowner is planning on transferring his/her land during his/her lifetime to a child or 'favourite niece or

[7] Collaboration can be defined as two or more people working together towards achieving common goals
[8] http://www.teagasc.ie/collabarrangements/

nephew' he/she can lease the land for up to 15 years and have no capital gains tax to pay on the transfer provided he/she has owned and farmed the land for 10 years prior to the lease and satisfies the other conditions to avail of the relief. If the land passes on the death of the landowner no capital gains tax arises.

2.3 Company Structure

Specimen Legal Agreement & Tax Concessions

Increasingly, Irish dairy farmers are operating their businesses through the medium of a limited liability company. There are no precedents available from Teagasc nor is there specific guidance from Revenue as to the tax treatment of farming trades operating through a company. DAFM and Teagasc have indicated that they do not propose to produce guidance and/or precedents which role they see as being fulfilled by private practice.

2.4 Cow Leasing

Specimen Legal Agreement & Tax Concessions

Cow leases sometimes are included as part of a farm business structure. Such arrangements are regulated by DAFM Circular 4/91 which was updated on 11 July 2011. There are no specimen legal agreements available from Teagasc nor is there specific guidance from Revenue as to the tax treatment of cow leasing.

2.5 Employee/Farm Manager

Specimen Legal Agreement & Tax Concessions

Many Irish farms have farm managers and/or other farm employees. There is a specimen contract of employment available from Teagasc. There is also general guidance available from Revenue as to the tax treatment of employer/employee relationships.

2.6 Independent Contractor

Specimen Legal Agreement & Tax Concessions

Some farmers in Ireland simply hire an independent contractor such as a young energetic and experienced farmer to manage their farm business for them. There is no specimen contract for services available from Teagasc. There is general guidance available from Revenue as to the tax treatment of independent contractors.

Chapter 3
Alternative Operating Models

3.1 FRANCE

3.1.1 Setting the Scene – Farming in France

While the majority of farms in Ireland and France are family farms being owned and operated by the farmer and his family, the following may be cited as the main differences:-

- Land Availability – Scale of operation is greater in France. Right of pre-emption in France where farmers are offered any neighbouring land for sale or to rent as a legal right
- Availability of State grants, special installation loans and reduced interest rate loans for young farmers
- Statutory Security of Tenure where rental agreements are usually signed for nine or eighteen years whereas in an Irish context security of tenure on agricultural land (no buildings) does not arise until lessee has been in continuous occupation for 20 years or more.

3.1.2 GAECs

The development of farm partnerships in Ireland i.e. Milk Production Partnerships was significantly informed by the French model of the Groupement Agricole d'Exploitation en Commun (GAEC). GAECs are unique in the EU in that they are the only fully recognised collaboration system where all the qualifying farmers in the group are treated as favourably as those farming on their own with regard to EU and Government supports (DAFM, 2011b). It is very popular in dairying particularly as a route to expansion. The majority of holdings in large scale milk production in France are in GAECs, with GAECs accounting for 80% of the farms over 410,000 litres of quota (Mastorchio cited in DAFM, 2011b).

In a presentation delivered at the Teagasc/Irish Farmers Journal Conference on Joint Farming Ventures "A New Way of Farming : Share Farming and Partnerships" on 26 November 2009, Eric Mastorchio outlined the operating structures in existence in France.
The various types of operating structure can be compared/contrasted as follows:-

	SCEA	GAEC	EARL	SARL
Number of partners	Minimum 2	Minimum 2. Maximum 10. No spouses or common law spouses only. All partners must work	Minimum 1 maximum 10	Minimum 2 maximum 50
Corporate capital	No minimum	Fixed or variable minimum €1,500	Minimum €7,500	Minimum €7,500
Management	Manager partner or not, nominated by the partners articles of association	Manager must be a partner farmer	Two types of partners: partner farmers and ordinary partners bringing capital	Two types of partners: partner farmers and ordinary partners bringing capital

Figure 3.1 – Operating Structures in France

3.1.3 SCEA

Société Civile d'Exploitation Agricole (SCEA) is a civil society for agricultural purposes. The SCEA is an unlimited liability company. This type of civil society must obtain an operating licence before they can be registered with the register of commerce and companies. Managers may be appointed and generally do not receive a wage.

3.1.4 EARL

L'Entreprise Agricole à Responsabilité Limitée (EARL) involves both active and non-active farmers and is similar to an incorporated company. The non-active farmers are sleeping partners in the group. Setting up an EARL enables a sole farmer owning 100% of the capital to separate his professional assets from his private assets. The liability of partners is restricted to their capital input; their private capital is therefore protected. Mr Mostorchio speaking at a partnership conference in Ireland in early 2005 said that EARLS are expected to increase in both size and number in the coming years and that people with no farming connection may begin to buy into these groups as sleeping partners in the future.

3.1.5 SARL

Société à Responsabilité Limitée (SARL) is a private limited liability corporate entity whose liability is limited to the contributions of its members. Shares are not freely transferable. Transfers require the agreement of half the shareholders if the beneficiary is a third party. If the beneficiary is a partner, a spouse, an ascendant or a descendant, shares can be transferred without consent of other shareholders. The SARL represents two thirds of all commercial organisations in France.

3.1.6 Ballman

The European Court of Justice judgement in the 'Ballmann' case (1991) concerned contractual milk production arrangements' in the early 1990s. The case concerned the legality of a milk supplier producing milk in another milk supplier's facility. The Court found that provided there is independence of operation and clear separation of the quantities of milk produced by the owner of the cows and the quota owner, that the arrangement was legally acceptable. The arrangement allowed for the production of two or more quotas in one facility using one herd which provided opportunities for new entrants with no land, capital or quota. The arrangement was turned down initially at national level but approved by the EC Court. The arrangement originated for use by Mulder farmers who had to pass a milk production test, but who could not afford facilities and cows, as banks would not lend on the basis of a provisional quota.

3.1.7 Conclusion on French Position

The development of collab farming in Ireland was significantly influenced by the GAEC model of farming in France. The GAEC model has evolved and further models have been developed (SCEA, EARL, SARL & Ballman) to cater for various circumstances e.g. limited liability, outside investors etc.

3.2 UNITED KINGDOM

3.2.1 Setting the Scene – Farming in the UK

While the system of dairy farming in Ireland and the UK is becoming similar, the following may be cited as the main differences

- Land Availability – Scale of operation is greater in the UK
- Single Farm Payment – In 2012 in the UK 100% regional flat rate & 0% historic rate, whereas in Ireland there is 100% historic rate
- Statutory Security of Tenure under the Agricultural Holdings Act 1986 whereas in an Irish context security of tenure on agricultural land (no buildings) does not arise until lessee has been in continuous occupation for 20 years or more.

According to Dawson (1995) in the UK, there has been a trend for Parliament to intervene to give a statutory security of tenure to tenants. Under the Agricultural Holdings Act 1986 not only was the existing tenant given security for his life but, additionally, on two occasions after he voluntarily gave up the tenancy or died, members of his family could go before the Agricultural Lands Tribunal and obtain a new tenancy in their own names on basically the same terms as the original tenancy. This position has changed with the Agricultural Tenancies Act 1995 where there is no statutory security of tenure as regards future tenancies only that contained in the tenancy agreement itself.

According to Davis & Ors (2009), the joint ventures most commonly used in the UK are partnerships, contract farming agreements and share farming agreements. Before the coming into force of the Agricultural Tenancies Act 1995, partnerships were often entered into in order to avoid the security provisions of the Agricultural Holdings Act 1986. The contractual agreements governing partnerships vary greatly. There is very little statutory interference. Limited liability partnerships (LLPs) were introduced by the Limited Partnership Act, 2000. According to the explanatory notes which accompanied the Act:
"The essential feature of an LLP is that it combines the organisational flexibility and tax status of a partnership with limited liability for its members*"*.

Davis & Ors (2009) opine that, now that new tenancies are governed by the Agricultural Tenancies Act 1995 which confers no security of tenure other than that created by the contract itself. The liability of a partner may be reduced by establishing an LLP, the main reasons for setting up share farming arrangements have been removed. Further they opine that, whatever arrangement is entered into, it is essential that the agreement records what is to happen in practice and that the parties stick to those arrangements. Otherwise there is a risk that a partnership or a tenancy will in fact have been created.

3.2.2 Collab Farming Project in Wales

The Dairy Development Centre[9] in collaboration with the Andersons Centre[10] undertook a project to examine the strengths and weaknesses of collab ventures, considered their merits and any adaptations that were necessary to fit into the agreed Dairy Strategy for Wales which culminated in a report in 2008 (DDC, 2008).

[9] The Dairy Development Centre (DDC) aims to facilitate the development of the Welsh dairy industry through the provision of a proactive technology transfer service and market intelligence
[10]The Andersons Centre provides agricultural consultancy services to the agricultural, rural and food sectors across Great Britain

The following collab ventures were reviewed:

Direct Farms	Direct Farming Assistance	Input Management
Partnerships	Contract Heifer Rearing	Buying Co-operatives
Contract Farming	Crop Growing	Selling Co-operatives
Share Farming		Machinery & Labour Sharing
		Machinery Ring
		Discussion Groups

The author proposes to detail legal and tax structures operating in UK, which are not already operating in Ireland or those whose operation in the UK varies substantially from how they operate in Ireland.

Collab Farm Ventures Decision Tree

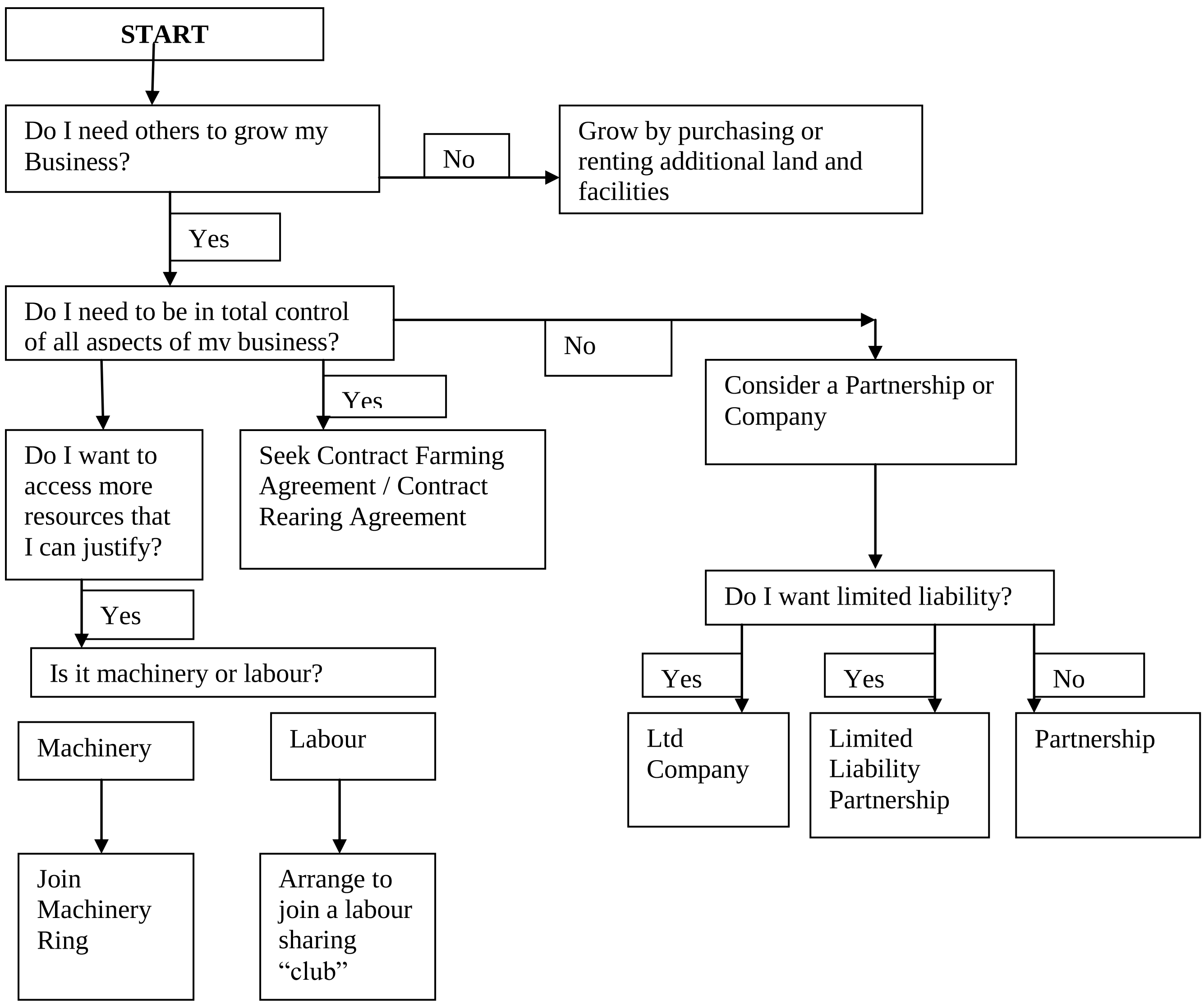

Figure 3.2 Collab Farm Ventures Decision Tree in UK. Source: DDC, 2011

The DDC Report (2008) considers the range of collab ventures under the following headings:-

- What they are
- Objectives
- Legal and financial structures
- Strengths and weaknesses
- Reasons for failure
- Suitability to the Welsh Dairy Industry

3.2.3 Contract Farming

A farmer landowner or tenant, either existing or new, employs a third party farmer as a contractor. The farmer contributes land and milk quota to the arrangement while the contractor contributes his management skills, labour and power. The dairy herd and youngstock can be owned by either the farmer or the contractor. The farming system must be agreed to by both parties in advance. The farmer retains a basic fee and takes a small share of the financial surplus. The contractor receives a basic fee to cover his immediate costs and retains the majority share of the financial surplus.

Ultimately, the farmer is responsible for the farm meeting the requirements of regulations, such as farm assurance and cross compliance. But the farmer can delegate respective duties to the contractor. The specifics of this should be set out in the agreement and then if the contractor fails he/she is in breach of contract and could be liable to fund any shortfall.

<u>Legal and Taxation</u>

The establishment of a Contract Farming Agreement will be legally binding upon both the farmer and the contractor once they have signed the documentation under the law of contract.

OPERATIONAL CHART FOR CONTRACT FARMING

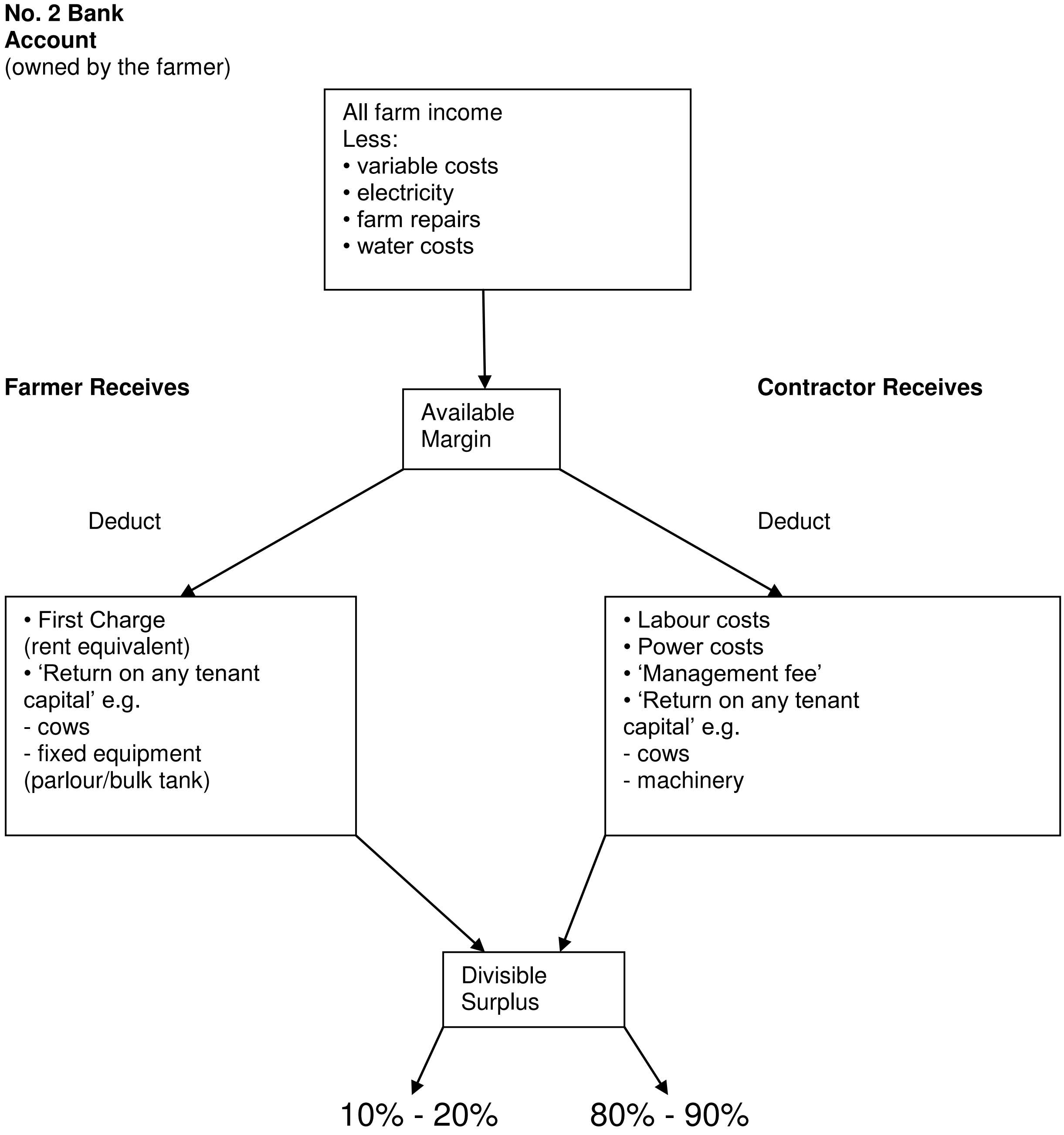

Figure 3.3 Operational Chart for Contract Farming

Key Points

• Farmer retains farming benefits but moves day to day responsibility to the Contractor.

• Cows can either be shared ownership between farmer and contractor or be owned entirely by one or the other.

• Split of Divisible Surplus should always be very high in favour of the Contractor to reward success and high performance.

• All farm income includes Single Payment and Environmental Scheme Payments to ensure the farmer is taking 'risk' to qualify for all farmer status tax benefits.

3.2.4 Contract Crop Growing

Forage growing agreements may range from traditional 'grass-keep' type arrangements, whereby the forage may simply be grass, which is either grazed or made into silage to growing brassicas, to be grazed on an arable farm over the winter period for young/dry stock moved from the dairy unit. Depending on the arrangement, responsibility for growing/managing the crop may belong to the crop or livestock producer, depending on the resources/expertise available to both or a combination of the two. For example an arable farmer growing wheat for wholecrop will most likely have the expertise and resources to complete the job 'in-house' right up to the delivery of the finished product, whereas growing fodder beet for winter grazing and the associated management of the stock during the grazing period will require a much greater input and involvement from the livestock producer.

<u>Legal</u>

It is imperative that specialist advice is taken when drawing up a Forage Growing Contract (a contract to produce forage), rather than granting exclusive occupation to the land, which would in effect create a tenancy, especially in the circumstances where the dairy producer is undertaking the majority of crop growing/management. The establishment of the forage growing agreement will be legally binding upon both the dairy producer and the crop grower once they have signed the documentation under the Law of Contract.

<u>Tax</u>

The 'Forage Grower' will receive income for growing the crop. This income forms part of the normal trading receipts of the business and all expenses of growing that crop can be offset against this before trading taxes are calculated. Where the 'Forage Grower' is not part of a wider farming business, or is seeking to simplify his farming business, then a growing agreement has the potential to allow retiring farmers to retain the tax advantages of still trading as a farmer.

3.2.5 Conclusion on UK position

The DDC Report highlights that the main challenges facing collab ventures in direct farming that were identified by almost all sectors spoken to are:-

- Changing the mindset of those who own land, and are either failing in business or wishing to cease farming that, there is a business mechanism and a farmer available to work with them for the future.
- The lack of "templates" and mechanisms to establish the joint venture in respect of:
    - Practical guidance / operational tips
    - Legal structure
    - Financial structure

However, a number of templates are now available on collab ventures at the following link http://www.ddc-wales.co.uk/collaboration-and-impact-groups/.

There are specimen agreements available for operating structures as follows:

- Contract Farming
- Partnership Farming
- Contract Stock Rearing
- Cow Hire
- Contract Crop Growing

There are also documented case studies to illustrate how the arrangements work in practice. Each of the specimen agreements highlight the fact that it is essential that a budget is always considered before the agreement commences to ensure the viability and delivery of all parties' expectations. While it is recommended to seek professional advice from a knowledgeable business and legal advisor, it notes that there is a shortage of such persons who have adequate knowledge of the subject. Consequently, a farming business could suffer unnecessary delay and cost in the establishment of their agreement, hence the use of checklists and templates provided via the Dairy Development Centre (DDC).

3.3 NEW ZEALAND

3.3.1 Setting the Scene – Farming in New Zealand

While the low cost grass based dairy farming system in Ireland and NZ tends to be similar, the following have been cited as the main differences (Roche, B 2008)

- Mindset – NZ farmers tend to have less of an emotional attachment to land unlike Irish farmers. NZ farmers tend to pay their parents market value for the transfer of the family farm whereas Irish farmers tend to acquire the land for little or no monetary consideration.
- Land Availability – Scale of operation is much larger in NZ than in Ireland
- Taxation – No Stamp Duty or Capital Gains Tax in NZ whereas there is in Ireland
- No direct Government support available to farmers in NZ whereas they are available in Ireland
- Less Regulations from an Environmental, Quotas & Animal Disease viewpoint in NZ compared to Ireland
- Recognised Structures that are in place in NZ provide Ladders of Opportunity whereas no such recognised structures exist in Ireland

An interesting similarity which became apparent is the historical and cultural tie to the land that the Māori people of NZ have in common with Irish landowners. Under Māori culture, they cannot sell or deal in land with anyone only other Māoris. The land is held under Māori Freehold Land Law and is owned by individual iwi's[11]. Accordingly, it is difficult for the banks to take security over Māori Freehold land. The iwi's are conscious to utilise the land to best advantage to provide a return for the growing numbers in the iwi. The profits derived from farming are used to purchase other land bases which are operated commercially and freely tradable. These other land bases are often operated as an equity partnership (company) with a number of iwi's coming together to invest in the farming enterprise and share in the profits of the venture. A similar policy could be adopted in the context of Irish farming where the family farm is sacrosanct. The family farm could be protected by being operated as normal via owner operator structure and any profits derived from the family farm could be invested in another farm/farms operated as equity partnerships for example.

The main operating structures found on NZ dairy farms are owner-operator, share milker and to a lesser extent, contract milker. Owner operators comprise the largest group of all

[11] "iwi" is a "Māori word for a set of people bound together by descent from a common ancestor or ancestors

operating structures being 65% of all herds (Dairy NZ, 2011). 35% of all herds are operated by sharemilkers, 55% of which are 50/50 sharemilkers (Dairy NZ, 2011). Herd analysis by operating structure in 2010/11 is set out in Appendix 3.

3.3.2 Collab Farming Project in New Zealand

Federated Farmers which are the main farmer representative group in New Zealand provide a range of specimen legal agreements for their members as follows:

- NZ Herd Owning Sharemilking Agreement
- Variable Order Sharemilking Agreement 2001
- Variable Order Sharemilking Agreement 2012
- Contract Milking Agreement
- Deed of Lease for Rural Land
- Grazing Lease Agreement
- Stock Lease Agreement
- Individual Employment Agreement
- Crops for Silage Agreement to Grow and Purchase
- Grain Contract Agreement to Grow and Purchase
- Contract for Services
- Agreement for Sale and Purchase of Stock
- Agreement for Sale and Purchase of Farm Equipment
- Wintering Dairy Cow Grazing Contract

The author proposes to detail legal and tax structures operating in NZ, which are not already operating in Ireland or those whose operation in NZ varies substantially from how they operate in Ireland. Further, the key considerations when analysing which management structure to employ/engage are set out in Appendix 3.

3.3.3 Sharemilking & Contract Milking

Sharemilking has traditionally been the first step to farm ownership. Sharemilking involves a share milker operating a farm on behalf of the farm owner for an agreed share of the farm receipts (as opposed to a set wage). Two types of sharemilking agreement are commonly used: Variable Order Sharemilking (VSOM) agreement and 50% agreements also known as Herd Owning Share Milking (HOSM). Contract milkers are contracted to milk a herd at a set price per kilogram of milk solids produced.

- Herd Owning Share Milking also known as 50:50 Sharemilking

Under the 50% agreement, the sharemilker owns the herd and any plant and equipment (other than the milking plant) needed to farm the property. The sharemilker is usually responsible for milk harvesting expenses, all stock related expenses and general farm work and maintenance. The owner is usually responsible for expenses related to maintaining the property. Under this arrangement the sharemilker normally receives 50% of the milk cheque. However, this can range from 45% to 55%. The sharemilker who owns the herd will also receive the majority of income from stock sales.

- Variable Order Share Milking also known as Lower Order Sharemilking

The Sharemilking Agreements Act, 1937 was introduced to make provision for safeguarding the interests of sharemilkers under Variable Order Sharemilking Agreements. According to Gardner (Gardner, 2011) while share milkers are self-employed, Parliament took the view that variable order sharemilkers were 'workers' and warranted the protection of the legislature. The Act sets out minimum terms to apply to all sharemilking agreements which terms cannot be contracted out of in a sharemilking agreement. Since 1937 there have been thirteen "Orders"; new orders coming into force when representatives of sharemilkers and farm owners agree on the changes and it has been through the regulatory process. The most recent order came into force on 22 August 2011. The variable order sharemilking agreement involves the farm owner retaining ownership of the herd and bearing more of the farm costs. Under the current order for those with herds of not more than 300 cows and who agree not to share dividend revenue from the Dividend Related Payment Adjustment, the minimum percentage of income derived from milk supplied to Fonterra[12] will be 22 percent.

DairyCo[13] in its report (DairyCo, 2009) likens the NZ sharemilking system to share farming in the UK. The report states that in the UK the Single Farm Payment and Environmental Scheme payments can add complexity to agreements. It suggests that the division of the income would be closer to 70:30 in favour of the share milker in the UK, to cover the higher winter housing and feed costs compared to the NZ 50:50 share milker arrangements. DairyCo likens the contract milking system in NZ to the contract farming system in the UK.

[12] Fonterra Co-operative Group Limited is New Zealands main milk processor
[13] DairyCo is a levy-funded, not-for-profit organisation working on behalf of Britain's dairy farmers

3.3.4 Equity Partnership

DairyCo in its report (DairyCo, 2009) state that equity partnerships can challenge the previous model of family farm businesses (generally operated as a sole trader) and create new opportunities in the agricultural sector for those who are unable to finance a farm business tenancy or farm ownership. An equity partnership is legally constituted as a limited liability company and should not be confused with a partnership.

This is how it works:-

1. A number of farmers come together and set up a farming company. A shareholders agreement sets out how the company will operate. This is signed by and is binding on all shareholders. The shareholders can be comprised of the farmers who set up the company, farm staff, outside investors etc. The number of shares held by each shareholder is dependent on the amount of money invested by them in the company.
2. The farming company purchases assets including land, stock and plant which are owned and farmed by the company. The purchase of assets is funded by shareholders capital and bank debt borrowed by the company. The shareholders capital contribution may come from the shareholders own cash or from borrowing against their own assets.
3. The shareholders agreement will include clauses on the following:-
    - Objectives and purpose of the company
    - Authority to make commitments on behalf of the company
    - Share transfer and exit clause (includes the “sunset” clause)
    - Banking arrangements
    - Meetings and reporting standards
    - Voting on major decisions (e.g. capital expenditure, leases, investment in other companies)
    - Appointment of directors
    - Other clauses aimed at protecting individuals’ property rights

- An individual Employment Contract for the manager even if a shareholder

<u>Keys to Success</u>

1. People
    a. Need common goals
    b. Open and honest communicators, no hidden agendas
2. Scale

    a. Farm income sufficient to meet shareholders goals
    b. Some efficiencies
    c. Capital expenditure – development, expansion easier to fund
3. Exit Mechanisms
    a. Right of transfer direct to family
    b. Compulsory offer to other shareholders
    c. Offer outside company at same price
    d. Right to require liquidation of company

There are three types of companies effective for equity partnerships in NZ as follows:

- Standard company
- Qualifying company (QC) – governed by tax provisions that aim to treat the company and its shareholders as one entity as much as possible for income tax purposes
- Look-through company (LTC) - provides for a transparent form of tax treatment. The owners of an LTC are taxed on the profit of the company, as well as being able to offset any losses from the LTC against their other income. The owners are taxed at their marginal rate and not the corporate rate.

3.3.5 Family Trusts

Family trusts are a popular way of conducting farm business operations in NZ. The main benefits of the trust structure used in a family farm situation in NZ are to protect the family farm in the event of marital breakdown.

A popular succession structure as devised by Ian Blackman[14] which he refers to as the living succession plan™ structure is as follows:-

1. A company owning all farming assets and trading
2. A trust owning shares in the company and all other assets, e.g. beach house, share portfolio etc

This is how it works:-

1. The farm assets are transferred to the company
2. The parents trust owns shares in the company. The parents are trustees of that trust
3. The parents as trustees sell shares in the company to the succeeding child (or his trust)
4. The parents as beneficiaries receive the purchase price in cash. Further shares are sold over time. The purchase price is received by the parents as a tax free payment. This

[14] New Zealand Rural Solicitor and Author

enables them to enjoy a high standard of living and if they wish to provide financial assistance to the other children.

5. The control, ownership and income which become available to the succeeding child increases as he purchases more shares. Thus, there is a natural progression of ownership from 25% to 50% to 75% of that company. This aligns with the day-to-day operation of the farm.

3.3.6 Ladder of Progression for Young Farmers

DairyNZ represents New Zealand's dairy farmers. Their work includes research and development to create practical on-farm tools, leading on-farm adoption of best practice farming, promoting careers in dairying and advocating for policy, legislative and investment decisions by central and regional government which are good for dairy farming.

DairyNZ's Career Pathways Tool uses simple technology to bring career planning to life, providing those in the dairy industry with real career choices. There are six main areas of Career Pathways which are set out in Appendix 4. The tool includes career planning resources, creates customised career maps and simplifies the process of learning about on-farm and near-farm positions - all via a portable USB flash drive.

DairyNZ have devised various strategic planning tools which ensure that anyone willing to work hard and continually develop their knowledge and skills can succeed in the NZ Dairy Industry. It encourages young farmers to write down the direction they want to head, the skills they need to learn and specific tasks they must complete which is part of a process called Strategic Planning. The Strategic Planning workbooks devised by DairyNZ are designed to help farmers develop a plan or roadmap for their lives so that they can progress from farm employees to farm assistants to farm managers to an operation manager of a large multiple unit dairy farm. Young farmers can also choose to invest their money in farming through sharemilking and ultimately farm ownership. There is advice and guidance available in relation to creating a wealth creation pathway.

Another organisation instrumental in NZ in creating a ladder of opportunity for young farmers is Agriculture ITO (AgITO) which is dedicated to helping farm businesses enhance productivity by improving skills and knowledge on the farm. Their training develops capable people who can do the job well. Developed with industry, for the industry, their training equips farms with the expertise to become a productive and innovative business. AgITO training is subsidised by industry and Government. They provide leadership in agricultural education and training, develop national qualifications, maintain national standards and provide ongoing support for their trainees and employers.

3.3.7 Conclusion on NZ Position

It is evident from statistics in NZ that despite the evolution of various corporate operating structures there, the majority of farms remain in the ownership of NZ farm families.
NZ have a range of collab farming ventures to choose from which can cater for people involved in the farm at all levels from farm worker to equity manager. There is comprehensive guidance and templates available to establish the joint venture in respect of practical guidance / operational tips, legal structure and financial structure.

The share milking system in NZ can be likened to the share farming system in Ireland. The contract milking system in NZ can be likened to the contract farming system in the UK.

3.4 United States of America

The author visited Missouri where a number of NZ farmer investors have come together to form equity partnerships to purchase farms which they operate on a low cost system. In line with the operating structures in NZ, while the farms are owned by equity partnerships, they are operated by share milkers and to a lesser extent, contract milkers. These operating structures have been set out in the preceding section dealing with NZ. The University of Missouri Extension Group has developed a pasture based dairy programme with various resources available on its website[15] to include templates (practical, legal and financial) and information on dairy career paths.

[15] http://dairy.missouri.edu/grazing/sharemilking/

Chapter 4

Suitability of Alternative Operating Models in an Irish Context

The following table is a summary of the various operating models which can be used to facilitate expansion in dairying post milk quota in 2015.

	Relationship	**Legal Structure**	**Tax Structure**
Farm Manager	Employer/Employee	Employment contract governed by employment law	Employer/Employee Income Tax (PAYE), PRSI, Universal Social Charge
Contract Milker **Contract Stock Rearing** **Contract Crop Growing**	Independent Contractor	Contractual agreement governed by contract law	Landowner and Contractor both self employed subject to Income Tax, PRSI and Universal Social Charge
Sharemilkers	Independent Contractor	Contractual agreement governed by contract law	Landowner and Sharemilker both self employed subject to Income Tax, PRSI and Universal Social Charge
Land Lease	Lessor/Lessee	Lease agreement governed by landlord and tenant law	Lessor and Lessee both self employed subject to Income Tax, PRSI and Universal Social Charge
Equity Partnership	Joint Venture	Shareholders agreement governed by company law	Company subject to Corporation Tax, Directors subject to Income Tax on dividends. Farm manager & employees subject to Income Tax (PAYE), PRSI and Universal Social Charge
Partnership	Joint Venture	Partnership agreement governed by partnership act	Partners share subject to Self Employed Income Tax, PRSI and Universal Social Charge

Figure 4.1 Summary of Operating Models which can facilitate expansion in Dairying in Ireland

4.1 Contact Milking/Farming and Sharemilking/Share Farming

Contract Farming Arrangements and Share Farming Arrangements are joint ventures which are not intended to create partnerships between the parties. Under a contract farming agreement a farmer employs a third party either to carry out specific tasks for him or to be responsible for a part of his farming operations. In share farming arrangements, the landowner and sharefarmer co-operate in the farming venture but maintain their own separate businesses.

Contract farming enables farmers to remain in business but delegate certain tasks or areas of responsibility to contractors. The contractor is self employed and care must be taken to ensure that this status is maintained and that he is not deemed for tax or other purposes to have become an employee. The contractor will receive a contracting fee for his work which is payable, whether or not there is any profit from the farming of the land. In relation to milk quotas and SFP entitlements it is the farmer landowner who will generally hold and claim these subsidies and quotas. Contract farming works well in the UK and similarly should work well in Ireland. It can be used as an alternative to leasing whereby the landowner will continue to be regarded as a 'farmer' for tax purposes and for the benefit of EU and DAFM schemes. Additionally, it can provide opportunity to younger farmers to build equity and to gain experience.

Share milking in NZ has been likened to the share farming system in the UK. Essentially for a share farming arrangement to exist, the parties must each carry on their own separate business so that expenditure and receipts from the joint venture are expenditure and receipts of their respective separate businesses. There is no joint business set up between them. The arrangement is simply one for the sharing of gross returns and not for the sharing of profits. The use of the share farming model has been phased out of the UK as its operation is complex. The findings from the DDC report can similarly apply in an Irish context. The report states that, in the UK the Single Farm Payment and Environmental Scheme payments can add complexity to agreements. It suggests that the division of the income would be closer to 70:30 in favour of the share milker in the UK, to cover the higher winter housing and feed costs compared to the NZ 50:50 share milker arrangements. Consequently, it is unlikely that share farming and/or share milking will have any significant role to play in the future expansion of dairy farms in Ireland.

4.2 Equity Partnerships and Companies

The milk quota regulations allow a dairy farmer to lease his land and milk quota to a company in which the majority of shareholders are milk producers. Accordingly, there is nothing to prevent a number of ordinary sized dairy farmers getting together, forming a company, leasing their dairy land to that company and organising between them how to run it. Various restrictions which apply to MPPs do not apply to companies giving this operational model greater flexibility and scope. Equity partnerships work well in NZ and the US and could also work well in Ireland. The model could be used in the context of a dairy farmer, grain farmer, beef farmer, new entrant and outside investor coming together each contributing their unique individual assets, skills and expertise. It could also work to create opportunities outside of the family farm like the 'iwi' example in NZ. The family farm could be protected by being operated as normal via owner operator structure and any profits derived from the family farm could be invested in another farm/farms operated as equity partnerships.

The tax treatment depends on whether the assets are owned by the company or whether they are owned by the individual and leased to the company. In either scenario, the individual farmer maybe able to take advantage of Retirement Relief from Capital Gains Tax and for a son/daughter/niece/nephew in a succession scenario to avail of Business Relief for Gift/Inheritance Tax and Young Trained Farmer Relief for Stamp Duty.

A tax incentive could be availed of to encourage investment in farming akin to Relief for Investment in Corporate Trades (BES)/Employment and Investment Incentive Scheme (EII) and Seed Capital Investment Scheme, details of which are set out in Appendix 5.

4.3 Limited Liability Partnerships

The current model of partnership operating in Ireland is the MPP. The specimen agreement provides for unlimited liability. This poses significant financial risk to the partners. The Limited Partnership Act 1907 provides an alternative form of partnership where all the partners except one (the general partner) can limit their liability to the amount of their capital contribution. This model works effectively in the UK and accordingly it should similarly work well in an Irish context. It is possible for the general partner to be a company. Limited partners may not play any role in the management of the firm. All of the partners should be careful to avoid breaching this obligation, as to do so could expose the limited partner to unlimited liability. Unlike a company for the purposes of taxation, each partner is regarded as individually carrying on a separate trade and is taxed accordingly. However, tax legislation restricts the rights of limited partners and certain general partners who are not active partners to offset losses, interest and capital allowances of the partnership against non partnership income.

A number of tax concessions exist in the context of MPPs to ensure that a farmer is no worse off by farming in an MPP than he would by operating as a sole trader. The continuing status of actively farming enables the farmer landowner to take advantage of Retirement Relief from Capital Gains Tax and for a son/daughter/niece/nephew in a succession scenario to avail of Agricultural Relief or Business Relief for Gift/Inheritance Tax and Young Trained Farmer Relief for Stamp Duty.

4.4 Discretionary Trusts

A discretionary trust is a legal vehicle whereby assets are held in legal limbo until the assets are distributed out to the eventual beneficiaries. It works well in a farming situation where there are young children and consequently no obvious successor and time is needed to consider what should be done with the assets or to wait until the successors come of age or are otherwise ready to take on the assets. The other advantage of a discretionary trust is that there is often no gift, inheritance tax or capital gains tax on the assets going into the trust on the death of the person who set up the trust. When, however a beneficiary receives a distribution of either income or capital from a discretionary trust, capital acquisitions tax and income tax may become payable depending on the relationship between the person who set up the trust and the beneficiary. A once-off charge of 6% on the property of a discretionary trust arises when

a) The person who set up the trust is deceased and
b) The youngest child of the person who set up the trust reaches 21 years of age

Discretionary trusts may not work as well in Ireland as in NZ due to the disparity in the tax treatment. However, in an Irish context normally the trust document is set up in such a way that all the property is distributed out of the trust before the youngest beneficiary reaches the age of 21 years, thus avoiding triggering the 6% discretionary trust charge so there may be scope for using trusts in more limited circumstances than used in NZ.

Conclusions

"Structures are less limiting than the mindset of people" Adrian van Bysterveldt, DairyNZ

Collab farming is critically important to the sustainable development of farming in Ireland. The current level of collab farming in Ireland is low with 3.8% of SFP applications submitted by joint applicants in 2010. This can be attributed to a number of factors:-

- Younger farmers being unaware and/or uninformed about landowners intentions, concerns and issues relating to land ownership and transfer;
- The main collab farming model i.e. the MPP being over regulated, which is due to a large extent to adherence to milk quota policy;
- The lack of standardised "templates" and mechanisms to establish various collab farming arrangements.

Research shows that collab farming brings economic and social benefits. The main collab farming arrangements currently operating in Ireland and the main perceived flaws of each arrangement are as follows:

- The MPP model which has too much statutory interference;
- The Share Farming model which cannot be utilised in a dairy farming context due to the milk quota regulations; and
- The Contract Rearing of Replacement Heifers model which needs improvement in relation to disease policy.

While the MPP model was based on the GAEC model in France, this French model has evolved and other models have been developed to cater for an array of circumstances such as a young farmer building equity, participation by outside investors etc. In the UK there is practical guidance / operational tips and standardised information on legal and financial structures for an array of collab farming arrangements. However, there is an acknowledgment that there is a shortage of knowledgeable business and legal advisors who have adequate knowledge of collab farming arrangements hence the use of checklists and templates provided via the DDC. In NZ there is a range of collab farming arrangements to choose from and comprehensive guidance and precedents available from their main farming organisation Fed Farmers. The collab farming arrangements used in NZ incorporate a ladder of opportunity for young farmers to work their way through the dairy farming system to achieve their goals.

Contract farming works well in the UK and similarly should work well in Ireland. It can be used as an alternative to leasing, whereby the landowner will continue to be regarded as a 'farmer' for tax purposes and for the benefit of EU and DAFM schemes. Additionally, it can provide opportunity to younger farmers to build equity and to gain experience. Share farming and share milking are complex models to operate and consequently, it is unlikely that share farming and/or share milking will have any significant role to play in the future expansion of dairy farms in Ireland.

Equity partnerships work well in NZ and the US and could also work well in Ireland. The model could be used in the context of a dairy farmer, grain farmer, beef farmer, new entrant and outside investor coming together, each contributing their unique individual assets, skills and expertise. It could also work to create opportunities outside of the family farm like the Māori example in NZ. The family farm could be protected by being operated as normal via owner operator structure and any profits derived from the family farm could be invested in another farm/farms operated as equity partnerships. The specimen partnership model could be improved to provide for limited liability for partners and less statutory intervention. The discretionary trust model could be utilised more in a farming situation to protect farming assets in the event of marital breakdown.

There is very little (if any) change required from a legal and tax perspective to implement contract farming, equity partnerships and limited liability partnerships as operating models to facilitate the expansion of dairy farming in Ireland.

The partnership model is seen as the best way to facilitate the preservation of the family farm and 'corporate farming' is perceived as the destroyer of the family farm. However, it is evident from statistics in NZ that despite the evolution of various corporate operating structures there, the majority of farms remain in the ownership of NZ farm families. Economic viability will dictate the future of family farms and research is required as to the level of scale and profitability required in order to make the different operating structures viable.

Recommendations

General

- Farm organisations in conjunction with DAFM need to identify reasons for reluctance to make land available for collab farming arrangements through individual interviews with farmers by agricultural consultants employed by Teagasc or in private practice at time of completion of SFP applications;
- Macra / Agricultural Colleges need to educate younger farmers about older farmer landowners intentions, concerns and issues relating to land ownership and transfer;
- DAFM / Teagasc should assess the availability of funding from the EU for a project on collab ventures similar to that undertaken by the Dairy Development Centre for Wales (DDC);
- Teagasc / IFA / Macra / Professionals need to form a Collab Farming Representative Group to lobby and educate;
- Teagasc / IFA / Macra / Professionals need to come together and make available templates, practical guidance / operational tips and standardised information on legal and financial structures for an array of collab farming arrangements;
- Teagasc to carry out research into the level of scale and profitability required in order to make the different operating structures viable.

Ladder of Progression for Young Farmers (see Appendix 4)

- Teagasc / Macra / Agricultural Colleges need to develop a ladder of progression for young farmers including strategic planning tools which will enable young farmers to design their own pathways to success.

Partnerships (see Appendix 1)

- Teagasc / Professionals to amend the specimen partnership agreement to provide for a limited liability partnership;
- Collab Farming Representative Group should lobby for less statutory intervention in the operation of MPPs i.e. less 'red tape'.

Companies

- Revenue should facilitate an amendment to tax legislation so that long term leasing exemption should be extended to persons farming through a company;

- Revenue should facilitate an amendment to tax legislation so that Stamp Duty Relief for a Young Trained Farmer should be made available where he/she is trading through a company and they should not be penalised for incorporating their farming trade within five years of claiming the relief.

Leasing

- Revenue should facilitate an amendment to tax legislation so that the scope of the Income Tax Leasing Exemption is extended to include leases to some family members e.g. nieces/nephews

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Aisling Meehan
November 2012

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Apologies to anyone else I may have omitted unintentionally

Appendix 1

Recommendations for Improving Milk Production Partnerships

The NRN Report, 2012:-

- Regulations
    - Expert committee to develop specific legislation for partnerships
    - Non-dairy partnerships must not be disadvantaged
    - Existing partnerships must not be disadvantaged in CAP Reform
    - Rights/entitlements established by partnership to be allocated to individuals
    - Designate national office for allocation of herd numbers to partnerships
    - All partners should be designated as 'Herd Keepers'
- Information and Promotion
    - Challenge myths and misconceptions about partnership concept
    - Provide accurate information to farmers and professionals
    - Additional resources to promote, educate & provide knowledge on partnerships
    - Promote partnerships to specific groups such as drystock farmers, older farmers, young people, investors
    - Develop pilot monitor farms in conjunction with industry stakeholders
    - Highlight case studies on successful partnerships
    - Research on why farmers are reluctant to enter partnerships
    - Farm organisations need to promote concept of partnerships
- Incentives and Supports
    - Develop a charter on partnerships
    - Develop mechanisms to encourage people to licence land into partnerships rather than rent under shorter term conacre
    - Full stock relief should be maintained for those entering partnerships
    - In terms of future subsidies, young farmers should be considered in the same priority in farm partnerships as if they were established on their own
    - Proposed young farmer top up should be available to those in partnership
    - Increased thresholds for entitlements, rights and incentives to encourage entry into partnerships

    - A representative body for farm partnerships to be established
    - Facilitation mechanism to put potential partners in touch with each other
    - Teagasc to develop an advisory and training programme for consultants, accountants and solicitors on partnerships
- Ladder of Progression for New Entrants
    - Develop policies for young farmers to build assets within partnerships
    - Develop on farm business incubator units to establish young farmers/new entrants by way of partnerships.

The Deise 1250 Report, 2011:-

- Education
    - Teagasc and agricultural colleges to educate all age groups on potential of partnerships.
    - Education programme to be derived from Government/Department policy and the responsibility of the National Partnership Steering committee
    - Establish practical pilot case studies with regular research and development
    - Trained, credible and monitored facilitators
    - Trained farmer and non farmer mentors for top students/farm managers
    - Training programme to replace Farm Apprenticeship Board
    - Variety of technology mediums to share knowledge
    - Peer mentoring programme to be piloted across discussion groups
- Legal / Financial
    - One stop shop for all ones requirements in forming a partnership
    - Recognised accountable experts to facilitate partnership discussions
    - Independent ombudsman to investigate alleged inequalities re SFP and DAFM Schemes
    - Consistent R&D
    - Keep it simple – streamlined capturing and monitoring of data
    - Incentives to improve land mobility that are cost effective to the exchequer
- Promotion & Advertising
    - Use EBI success story to promote and reward excellence in partnership
    - Use of technology and variety of media to engage in diverse farmer body e.g. open days, conferences, websites, discussion boards, papers etc
    - Focus groups to capture ‘on the ground’ challenges and solutions.

- Funding
  - Cost/benefit analysis needs to be communicated to stakeholders on where rural development funding is being used at present
  - Engage with all stakeholders to bring real sustainable wealth to rural Ireland
  - Sponsorship options to be explored
  - Client/farmer pays for skills needed
- Farmers
  - Accept cultural shift from independent decision making to considering others
  - Anticipate the needs of partners and employees
  - Need to be proactive about their long term needs and take steps to identify the steps that will best serve them.

DAFM Report, 2011a

- Exemption from modulation deductions on the first €5,000 of Single Farm Payments
  - Currently MPPs are given only one €5,000 exemption rather than one for each farmer involved
- Disadvantaged Areas Compensatory Allowances Scheme
  - Currently the 34 ha limit applies whether the recipient is an individual farmer with one holding or an MPP with two or more farmers and holdings
- Capping of Payments
  - If capping of payments applies at a future date consideration should be given to applying the capping at the level of the individual and not the MPP
- Other EU/Government support schemes
  - Early Retirement Scheme, On-Farm Investment Scheme, Installation Aid Scheme would have operated on the basis of treating MPPs as if they were single farms. Any future supports should give full individual recognition to all qualifying participants on the same basis as if they were farming on their own
- Logistics associated with Herd Numbers
  - Difficulty caused by requirement to nominate a single herd keeper. Interpretation of regulations by DVO's can differ between offices and this needs to be standardised.
- Professional Fees
  - Cost involved in engaging solicitors, accountants and agriculture advisors
  - Fee to register the partnership with Teagasc.

Teagasc Report, 2012

- In-depth customised facilitation needed to assist farmers in devising a workable Farm Partnership agreement
- Need for group based extension process to undertake some of preparation work
- Need to generate knowledge of farm partnerships among the general farming population
- Develop a Farm Partnership Incubation Group of farmers who are candidates for establishing partnerships which would promote farmer led learning.

Appendix 2

UK Collab Ventures

The following were put forward as reasons for success or failure in Collab Ventures

	Success	Failure
Partnerships	• Non family partners • Family partners who treat the business separately • Partners with complimentary skills	• Established too quickly with insufficient knowledge and business competence among partners • Insufficient profit to fulfil partners expectations • Partners not respecting each other • Poor or no partnership agreement
Contract Farming	• Resulting business growth • Clear agreement and respect for each parties future demands and lifestyle (e.g. retirement planning)	• Insufficient reward for each party and capital employed • Poorly structured agreement
Share Farming	• Successful business • Allows further development from a low capital share to potentially 100% asset ownership	• Complex administration • Enthusiasm but no correct vision
Contract Heifer Rearing	• Allows the core dairy unit to focus on milk production Skill focus Capital focus Optimum use of capital Optimum technical skills • Excellent use of land away from the ring fenced milking platform • Block calving can produce the best low cost results • Could suit those who want to reduce their workloads	• Beware of poor stock rearers with a beef store mentality rather than growing a dairy heifer all year round • Harder to operate on an all year round calving unit • Poor management and monitoring disciplines
Crop Growing	• Owner in control of land and crop • Allows total feed supply security • Maintains the focus, skills and capital on the dairy unit	• Poor technical grower • Insufficient yield • Beware of the cost of hauling low dry matter feeds long distances
Buying Co-operatives	• Scale and large volumes • Reduced prices adding up to £60/cow savings	• Lack of confidentiality • No benefits to the trading merchant

	• Less time required per farmer to procure goods of great value • Provide tangible benefit to the supplier (e.g. load size, logistics, efficiency, prompt payment, reduce admin and low/minimal sales input)	• Small volume of commodities • No business identity
Selling Co-operatives	• Extra income for the farmer member • Can fill local and/or high value niche markets • Gets the farmer closer to the customer-pride reward and fulfilment	• Too many farming skills applied by farmer direction and not sufficient executive respect • Failure to invest sufficient capital • Lack of commitment and satisfaction when commodity milk prices rise
Machinery/ Labour Sharing	• All involved farmers follow the same practices • Economies of scale and optimum utilisation • Full time labour units can be retained rather than rely on casual or part time labour • Machinery and labour only paid for when required • Can result in lower operational costs than using contractors	• Poor documentation and agreement when dealing with: Breakages Greater demand than supply (who goes first?) • Loss of independence • These businesses are less used when incomes increase • Needs a strong facilitator and communicator for success
Machinery/ Labour Rings	• Excellent use of surplus capacity (machinery/labour) • Excellent buffer for normal operations and/or emergencies and crisis management • Could work well also as buying and selling co-operatives	• Travelling time and costs (down-time) • Unco-operative mind set and individuals lack of flexibility • Less usage when farming returns increase
Discussion Groups	• Openness • Meeting of people with common goals namely profit, sustainability & enjoyment • Great vehicle for growth, confidence, knowledge building	• Poor facilities • Under funding • Can run its course of time without new injection of ideas and development

Findings from Successful Collab Ventures

Venture Type	Technical Results	Managerial	Financial Results
Partnership	Increased yields and utilisation	Such as:- Business reporting Financial control Staff and partner	Improved due to:- Lower depreciation per litre Improved return on

		communication	capital Timely financial reporting Partner responsibility
Contract Farming	Selection of correct contractor is essential	Business disciplines applied to report to the asset owner	Improved due to correct selection of the asset owner
Share Farming	Dependant upon choosing the correct share farmer. "Lower order" share milker are normally selected because they are good technical operators	Dependent upon choosing the correct share farmer. Structure in place to develop managerial skills and success	As a result of share milker selection
Contract Rearing Dry Stock Heifers	Dependent upon selection criteria for a good rearer	Good/regular communication required	Does and must benefit both parties involved
Crop Growing	Select a good grower	Regular management and communication	Economies of scale on machinery and know how
Buying Co-ops	Ability to procure and secure the best products and best value for money	Clear, adhered to business disciplines required	Large savings per business (irrespective of business size)
Selling Co-ops	Recruit the best technical operators	Allows executive management to prevail but monitor on their behalf	Establish clear investment/return expectations e.g. ROC
Machinery/ Labour Sharing	More timely operations (due to less reliance on large contractors) = better results	Essential from a good business manager	Substantial capital investment but allows operational cost savings and no contractor profit margin
Machinery/ Labour Rings	Similar benefits to Machinery/Labour Sharing but potentially better use of capital		
Discussion Groups	Best practices within the group are identified and viewed as well as opportunities to visit other groups to see other successful businesses		

Venture Type	**Animal Health**	**Environmental Benefits**	**Overall Conclusions**
Partnership	Improved due to focused skills and investment	Enhanced	Works well with co-operative business attitudes and realistic business plan. More enjoyable than working on ones own
Contract Farming	Ability to invest in a positive business	Enhanced due to ability and logic of capital investment	All aspects improved because the core business decision is correct

Share Farming	Enhanced – good animal welfare for optimum farm profitability	Enhanced and invested in to establish long term sustainability	Works well but continued development and growth is essential for sustainable success and reward
Contract Rearing Dry Stock Heifers	Choice of a good stockman is essential	Allows focused investment e.g. dairy/slurry for milk production unit – loose goals for heifer rearing is a possibility	Very successful and can satisfy many personal and business objectives
Crop Growing		Business success=environmental success	Could ensure security of food supply to dairy business and allow expansion of the milking platform
Buying Co-ops	Best products used		Financial benefits per member. Allows specialist skills to be applied in the correct area
Selling Co-ops	Opportunity to optimise animal health	Opportunity to avoid environmental issues by sound investment (with scale)	Can be very successful and add value to basic returns
Machinery/ Labour Sharing	Quality operators = quality stock	Qualified and trained operators	Excellent return on capital and helps to reduce reliance on external resources
Machinery/ Labour Rings	Similar benefits to Machinery/Labour Sharing but potentially better use of capital		
Discussion Groups	Best practices within the group are identified and viewed as well as opportunities to visit other groups to see other successful businesses		

Appendix 3

NZ Herd analysis by operating structure in 2010/11

Operating Structure	No of Herds	% of Herds	Average Herd Size	Average effective hectares	Average cows per effective hectare
Owner operators	7,667	65.4%	381	140	2.73
Sharemilkers					
Less than 20%	233	2%	577	188	3.07
20-29%	1,274	10.9%	416	147	2.82
30-49%	273	2.3%	314	117	2.70
50/50	2,249	19.2%	374	133	2.81
Over 50	29	0.2%	488	178	2.74
All sharemilkers	4,058	34.6%	396	140	2.83
All farms	11,735		386	140	2.76

Note Contract milkers are included with owner operators.

Source: Dairy NZ, 2011

Pathway Options – Comparisons, Pros and Cons

	Farm Manager	Contract Milker	V/O SM	H/O SM	Lease	Equity P/Ship
Relationship	Employer/ Employee	Owner/ Contractor	Owner/ Contractor	Owner/ Contractor	Lessor/ Lessee	Joint Venture
Length of Tenure	Variable	Variable Typically 1-2 years	Variable Typically 1-2 years	Variable Typically 3 years	Variable Typically 1-5 years	Typically minimum 5 years
Legal Status	Bound by Employment Law	Contractual Agreement Open to Negotiation	Contract bound by variable order agreement (statute)	Contractual Agreement open to negotiation	Lease agreement	Contractual agreement
Level of Day to Day Decision Making	Dependant on level of control delegated to manager	Contract milker has day to day control	Sharemilker has day to day control	Sharemilker has day to day control	Lessee has day to day control	Equity manager/sharemilker
Staffing Responsibility	Farm owner	Contract milker	Sharemilker	Sharemilker	Lessee	Equity manager/ sharemilker

Source: AgFirst, 2012

Key areas to consider when analysing a progression path

From a manager/sharemilkers perspective						
	Farm Manager	**Contract Milker**	**V/O SM**	**H/O SM**	**Lease**	**Equity P/Ship**
Skills	Farm mgmt	Farm mgmt, small business mgmt	Farm mgmt, small business mgmt	Farm mgmt, small business mgmt	Farm mgmt, small business mgmt	Farm mgmt, small business mgmt, governance
Financial Risk (mgmt perspective)	Little Financial risk. May include performance bonus	Risk from production variability	Risk from production and payout variability	Risk from production and payout variability changes in livestock values	Risk from production and payout variability, changes in livestock values	Risk from production and payout variability, changes in livestock values and land values
Investment Required	Nil	Usually motorbike, misc equipment All machinery in some	Usually motorbike, misc equipment All machinery in some	Livestock and machinery	Livestock and machinery	Livestock, plant and machinery, land

		cases	cases			
Wealth Creation – earnings per annum or return on equity	\$50-\$150,000	\$60-\$120,000	\$60-\$200,000	15% plus capital gain/loss of livestock	?	3% - 6% plus capital gain/loss of land and livestock

Source: AgFirst, 2012

Note

Farm Management Skills – on-farm related skills, e.g. pasture management, animal husbandry, machinery, R&M, soils and fertiliser

Small Business Management – Financial budgeting, cash flow management, invoicing, wages, HR skills

Governance – reporting to and working with a board of directors at a governance level. Increased requirements for reporting and communication.

Key Considerations when analysing which management structure to employ/engage

From a Farm Owners Perspective						
	Farm Manager	**Contract Milker**	**V/O SM**	**H/O SM**	**Leasing**	**Equity P/Ship**
Roles of Farm Owner	Staffing Feed Fert R&M Animal Health Breeding Financial	Feed Fert R&M Animal Health Breeding Financial	Feed Fert R&M Animal Health Breeding Financial	Feed (split) Fert R&M (split) Financial	Minimal – oversee farm to ensure it is being maintained	Variable depending on how the partnership is structured
Investment Required	Livestock Plant & Machinery Land Shares	Livestock Plant & Machinery Land Shares	Livestock Plant & Machinery Land Shares	Land Shares	Land Maybe shares	Livestock, Plant & Machinery Shares
Financial Risk (mgmt perspective)	Risks from production & payout variability Changes in livestock values & land values	Risks from production & payout variability Changes in livestock values & land values	Risks from production & payout variability Changes in livestock values & land values	Risks from production & payout variability		Risks from production & payout variability Changes in livestock values & land values
Milk production per ha			Highest average production/ha	2nd highest average production /ha	?	?
Financial		Returns		Returns	Approx.	Depends on

Returns		similar to owner operator		lower than owner operator or VOSM	20% of milk income	how EP is structured. Varies from no cash returns to quarterly dividends
Other						EPs more difficult to dissolve than SM agreements

Source: AgFirst, 2012

Appendix 4 – DairyNZ Career Pathways

1. Explore my options
    a. Sharemilking
    b. Equity partnerships
    c. Rural professionals, scientists and other near farm roles
    d. Being a farm owner
    e. Farm employment
    f. Overseas options
2. Discover who I am
    a. Current skillset
    b. Personal qualities
    c. Needs and wants
    d. Values
    e. Communication style
    f. Interests
3. Plan my goals
    a. Map my career
    b. Setting goals
    c. Calculation and planning tools
    d. Financial management
4. Getting started
    a. Creating a CV
    b. New on farm
    c. Dairy calendar year
    d. Employers / employees guide
5. Achieve my goals
    a. Reading
    b. Awards and funding
    c. Scholarships and internships
    d. Time to move on
6. Learn and grow
    a. Training and education options
    b. Professional development
    c. Near farm opportunities
    d. Your career blueprint.

Appendix 5 – Tax Saving Schemes to encourage investment in farming

A method of encouraging outside investment in farming is to allow the purchase of shares in a farming company to qualify for approved tax relief schemes. Investors could deduct the cost of their qualifying investment from their total income for tax purposes. The schemes detailed below offer up to 41% tax relief (subject to conditions). The investment will be subject to capital gains tax in the normal way if the person later sells their shares, the income tax relief obtained being disregarded.

Relief for Investment in Corporate Trades (BES)/Employment and Investment Incentive Scheme (EII) – These reliefs were introduced by the Finance Act 2011 to replace Business Expansion Scheme and Seed Capital Scheme. The schemes take effect in respect of shares issued on or after 25 November 2011. The schemes provide a tax incentive to private investors to invest medium-term equity capital in companies, which would otherwise find it difficult to raise such funding. The relief enables individuals to deduct the cost of their qualifying investment from their total income for income tax purposes. It should be noted that EII does not shelter income from the Universal Social Charge.

Relief is given as a total deduction from income and the maximum amount which qualifies for relief in any one tax year is €150,000. Relief is available to each spouse and civil partners, subject to availability of income in his/her own right. The maximum rate of tax relief for subscriptions for eligible shares is 30%. However, a further 11% of tax relief may be available at the end of the holding period (currently 3 years) provided the company concerned has increased its number of employees since the investment was made or the company has increased its expenditure on research and development. If a gain arises on disposal, the individual will be liable to capital gains tax in the normal way, the tax relief obtained being disregarded.

In order to qualify for the relief,

- The investment must be made in a 'Qualifying Company' which is an unquoted company incorporated and resident in the State or resident in an EEA State carrying on business in Ireland. The scheme is available to the majority of small and medium sized trading companies subject to specified exceptions.

- The individual must be a ‘Qualifying Individual’ which is not connected with the company for 2 years before and 5 years after the shares are issued;
- The shares need to be held for a 3 year period;
- The shares must be fully paid ordinary shares.

The shares must be issued for the purpose of raising money for a qualifying trade which is being carried on by the company or which it intends to carry on. A claim for relief must be accompanied by a certificate issued by the company. A precondition for the certificate is that the company must furnish Revenue with a statement to the effect that it satisfies the conditions for relief and that this has been confirmed by Revenue.

Seed Capital Investment Scheme

This scheme provides income tax relief for investment by certain individuals in newly incorporated companies engaged in a BES-type activity or in certain research and development activities. The scheme operates by relieving a sum of up to €600,000 against the total income of the individual which is used to subscribe for shares in a new company for any of the 6 years immediately preceding the year in which the investment is made. The maximum relief in any one tax year is €100,000. The investment must be made in two stages with the second stage being made before the end of the second tax year following the tax year in which the first investment was made. To qualify for the relief the individual must:

- Be a full-time employee or a full-time director with the new company;
- Derive note less than 75% of his total income from Schedule E sources (normally income subject to PAYE), income from other sources not being more than €50,000 in each of the three years prior to the year in which the employment commences;
- Not have possessed or have been entitled to acquire more than 15% of the ordinary share capital, loan capital or voting power of a company other than a seed capital company except in specified limited circumstances;
- Acquire at least 15% of the issued ordinary share capital of the seed capital company and retain that 15% for one year from the date of investment or from the date on which the company commences to trade whichever is later.

Promotional Summary

Study Topic: “Access to Land for Dairying – New Legal and Tax Models in an Irish Context”

By Aisling Meehan – 2011 Nuffield Scholar

- Collaborative (“Collab”) farming is critically important to the sustainable development of farming in Ireland;
- There are a range of collab farming ventures which can work well in an Irish context including the Contract Farming model, Limited Liability Partnership model and Equity Partnership model;
- These models can serve to give greater Access to Land and Finance for young farmers and consequently, can contribute to developing a Ladder of Progression;
- There is no cost to the Irish farmer or Irish Exchequer to implement a range of collab farming models in Ireland;
- A Collab Farming Representative Group would serve to lobby and educate relevant stakeholders in the benefits of collab farming ventures.