

COMMUNITY INTEREST COMPANIES

In 2005 a new form of company was introduced, known as the **Community Interest Company (or “CIC”)**. Although not a charity, the CIC commits its profits and assets to be used for the benefit of the community, whilst at the same time providing all the flexibility and certainty of a company. Despite its recent introduction, however, the CIC remains a well-kept secret. This article explains what it is and when it can be used.

WHY USE A CIC?

Many organisations whose objectives are primarily social can be established using other legal structures, such as unincorporated association or registered charities. These do not, however, suit every situation. In the past it was felt that companies which did not have charitable status often found it difficult to ensure their assets were dedicated to the public benefit. The CIC was intended to meet this need and provide a transparent, flexible model.

CIC OR CHARITY?

It is important to note that a CIC cannot be a charity, so it does not benefit from the same tax advantages that a charity receives, even if its objects are entirely charitable. On the other hand, CICs are less regulated than charities. The main differences between CICs and charities are as follows:

- Charities must be established exclusively for charitable purposes, but CICs can carry out any lawful activity, provided it is for the benefit of the community;
- CICs do not have the favoured tax status that benefits charities;
- CICs are less regulated than charities;

- The CIC structure is specifically designed to provide a legal framework and an identity for social enterprises that want to adopt a limited company form;
- CICs can operate more commercially than charities. For example, CICs limited by shares can pay dividends to individual shareholders, subject to a cap. Stakeholders in CICs will have the assurance of community benefit, however, provided by the “asset lock” and transparency about their activities through the community interest report.

WHO MIGHT USE A CIC?

Whilst charitable status may be right for many social enterprises, some people will want to set up CICs to do good in a form other than a charity. This may be because:

- They want to work for the community benefit with the freedom of the non-charitable company form, but with a clear assurance of not-for-profit distribution status;
- Members of the board of a charity may only be paid if the charity’s constitution allows and it is in the best interests of the charity. This means that the founder of a charity who wishes to be paid cannot be on the board and must give up strategic control to a volunteer board, which is often unacceptable;

- The definition of “community interest” that applies to CICs is wider than the public interest test for a charity. Organisations that would not fall within the charitable definition may wish to take a CIC form;
- CICs are specifically identified with social enterprise, which some organisations may feel is more suitable than charitable status.

CICs can be created to meet all these needs. Also, charities themselves may wish to establish CICs, for example, to run their trading activities, the profits from which are paid over to the charity.

WHAT IS COMMUNITY INTEREST?

“Community interest” is at the heart of a CIC and the test of community interest differentiates CICs from other not-for-profit organisation. To become a CIC an organisation must satisfy the regulator that its purposes could be regarded by a reasonable person as being in the community or wider public interest. Access to the benefits it provides must also not be confined to an unduly restricted group.

Examples of existing CICs include:

- A GP health centre where the partners formed a CIC to provide community health care;
- A cycling support organisation which works with company management, work place travel planners, health promotion professionals and local cycle dealers to encourage and support those who want to cycle to – or at – work;
- An organisation that works with alcohol and substance abusers in a city environment and provides rehabilitation facilities;

ASSET LOCK

The “asset lock” is a fundamental feature of CICs. It is designed to ensure that the assets of a CIC (including profit and other surpluses generated by its activities) are used for the benefit of the community. This means that its assets must either be retained within the CIC to be used for community purposes or, if they are transferred out, the transfer must:

- Be made for full consideration, so that the CIC retains the value of the assets transferred;
- Be made to another asset-locked body (a CIC or charity, or non-UK based equivalent) which is specified in the CIC’s memorandum or articles of association;
- Be made to another asset-locked body with the consent of the regulator; or
- Otherwise be made for the benefit of the community.

DIVIDEND CAP

A CIC can pay dividends to shareholders, but there are restrictions which are intended to preserve the CIC’s overriding purpose as being for the public benefit. Where a dividend is paid to another “asset-locked” organisation (e.g. a charity) no limit applies. If the payment is to a non-asset locked body or to individuals, the dividend is capped as follows:

- There is a maximum dividend payable per share. Currently, the limit is 5% above the Bank of England base lending rate.
- There is a maximum aggregate dividend which limits the total dividend declared in terms of the profits available for distribution. Currently, the limit is 35% of the distributable profits.
- It is possible for a CIC to carry forward unused dividend capacity from year to year, but only to a limited extent. Currently the limit is 5 years.

REGULATIONS

CIC regulation is “light touch”. It was intended that the majority of CICs would have a similar relationship with the CIC regulator as companies have with Companies House, i.e. registration followed by annual returns. Therefore, regulation is not as active as for charity. The regulator does, however, have powers to investigate complaints from stakeholders and to act if it is found that a CIC is not working in the interests of the community or that the profits/asset lock is not being observed. These powers include the ability to change directors or to wind-up the CIC.

THE FORM OF CICS

CICs can be established in one of three forms:-

- A private company limited by shares;
- A private company limited by guarantee; or
- A public limited company

Existing companies which want to convert to a CIC can do so provided they meet the CIC requirements.

CONCLUSION

Whilst the CIC may not be the answer to providing public benefit for many clients, where a charity will still be the best solution, for others it provides a flexible framework for delivering community services. It is likely that we shall see many more CICs established in the future.

This briefing offers general guidance only. It reflects the law as at October 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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