Gaby Hardwicke SOLICITORS

Briefing Note: Community Interest Companies (CICs)

Introduction

This Briefing Note provides an overview of Community Interest Companies (CICs), including key points to note and legal requirements.

This Briefing Note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note

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What is a CIC?

The Community Interest Company (CIC) was introduced in 2005 to provide a corporate structure for those who do not wish to be restricted by charity law, but want to carry out an activity that will directly or indirectly benefit the community. Key points of a CIC are:-

- it can be used for any type of activity (other than political), provided that it benefits the community;
- its members' liability can be limited, by either shares or by guarantee;
- its activities are less regulated than that of charities;
- it must pass the 'Community Interest Test';
- it is subject to an 'Asset Lock' and 'Dividend Cap' (see further below); and
- it must file a 'CIC Annual Report' along with its annual accounts every year.

The Community Interest Test

To be granted approval from the CIC Regulator in order to form a CIC, a CIC must satisfy the Community Interest Test, by filing a community interest statement (Form CIC36) that shows that a "reasonable person might consider that its activities are being carried on for the benefit of the community". This test is less restrictive than the equivalent provisions relating to a charity, whose objects must be exclusively charitable.

Forming a CIC

Although setting up a CIC is relatively quick and easy in contrast to the registration of a charitable company, as a CIC can be a private company, limited by either guarantee or by shares, or a public limited company, particular care must be taken in choosing the appropriate corporation. To ensure that your objectives are not restricted by a particular type of corporation, we recommend you seek legal advice prior to incorporating your CIC.

Once you have chosen the appropriate corporate structure, you must first file a Form IN01, along with a community interest statement at Companies House. This is then automatically passed to the CIC Regulator for approval. Provided that there is no dispute as to whether the CIC passes the Community Interest Test, registration takes only a matter of days.

It is possible to convert an existing company, or registered charity into a CIC. This is done by completing the necessary internal requirements, such as a change of Articles and name, followed by an application to the CIC Regulator for approval.

Articles of Association

Articles of Association for CICs can be flexible, provided that they contain certain restrictions. The general form of Articles of Association for CICs will depend on their size and purpose:-

- 'Small' membership presumes that the directors will make most of the important decisions, rather than its members, and that the directors will hold office for long periods of time.
- 'Large' membership presumes that directors will make day-to-day decisions, but it is the members that will control the overall governance of the company. For this reason the decision-making provisions in the Articles for a 'large' membership CIC are more detailed and set out a more formal process than that of 'small' membership Articles.

Unlike a charity, a CIC does not need to specify its objects in its Articles. However, the CIC Regulator considers it best practice to clearly identify both the nature of the CICs proposed activities and the community it intends to benefit.

The mandatory restrictions required in CICs Articles of Association include an 'Asset Lock' and a 'Dividend Cap'.

The 'Asset Lock'

The Asset Lock is a mechanism which prevents a CIC from transferring its assets for a consideration less than market value, unless it is transferring them to another CIC, charity, or for the benefit of the community it was set up to serve.

It is required to ensure that the assets and profits of the CIC are devoted to the benefit of the community and not for rewarding shareholders or directors.

The 'Dividend Cap'

Since October 2014 the Dividend Cap has two elements:-

- a CIC may distribute no more than 35% of its distributable profits for each year, and
- a CIC is unable to carry forward unused dividend payments to future years.

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Both the asset lock and dividend cap restrictions cannot be avoided by converting a CIC into an ordinary company. A CIC can only cease to be by a dissolution, whereby the assets owned are transferred to another asset-locked body, or by it converting into a charity and thus being governed by charity law.

Annual reporting obligations

A CIC, like other incorporated companies, must file annual accounts. However, in addition, a CIC must also file a 'CIC Annual Report' explaining how the CIC continues to meet the Community Interest Test and that it is engaging appropriately with stakeholders in carrying out its purpose. This report will appear on the public register.

If the CIC Regulator becomes concerned that a CIC is no longer serving the community it was set up to benefit, it may carry out an investigation or take action against the CIC directly.

If you would like to know more about this topic or our legal services, please contact either Mark Williams or Gemma Ritchie on 01323 435955 or by email: mew@gabyhardwicke.co.uk or gcr@gabyhardwicke.co.uk.

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