

Appendix 3 Information on Community Interest Companies

Community Interest Companies (CICs) are designed to deal with limits to the ability of social enterprises to raise finance, to improve the recognition of social enterprises and prevent those community assets which are not owned by registered charities from being sold for private gain. This is referred to as an asset lock.

CICs were announced in the Queen's Speech in 2003 and there are now 1545 CICs covering an extremely wide range of subjects from sports to recycling and include many mainstream companies who use the CIC as a charitable arm.

CICs are allegedly easy to set up and are similar in form to limited companies but have special features:

- A statutory "lock" on the assets and profits of CICs;
- A "community interest test" which companies must pass in order to be registered. To become a CIC, an organisation would need to satisfy the regulator that its purposes could be regarded by a reasonable person as being in the community or wider public interest. It will also be asked to confirm that access to the benefits it provides will not be confined to an unduly restricted group
- An annual report explaining how their activities have benefited the community and how they are involving their stakeholders;
- A CIC regulator responsible for ensuring that CICs comply with their legal requirements.

A charity can convert from to being a CIC and a charity can have a subsidiary which is a CIC. Charities have tax advantages over CICs but CICs are more lightly regulated and can therefore be more flexible in approach. The main differences are:

- Charities must be established exclusively for charitable purposes, but CICs can be established for any lawful purpose as long as their activities are carried on for the benefit of the community
- **Charities have certain tax advantages that CICs do not have**
- In return for those advantages, charities are subject to more onerous regulation than CICs
- The CIC legal form was specifically designed to provide a purpose-built legal framework and a "brand" identity for social enterprises that want to adopt the limited company form

- CICs will be free to operate more “commercially” than charities (e.g. CICs limited by shares can pay dividends to individual shareholders, subject to a cap), but stakeholders in CICs will still have the assurance of community benefit provided by the asset lock and transparency about their activities ability through the community interest report

A CIC can pass its assets back to a charity – for example it could run a charity event and pass the proceeds back to the charity.

Extract from the CIC Regulator’s web site:

The sort of people who will want to set up a CIC will typically be entrepreneurs who want to do good in a form other than charity. This may be because:

- They are looking to work for community benefit with the relative freedom of the non-charitable company form to identify and adapt to circumstances, but with a clear assurance of not-for-profit distribution status.
- Members of the board of a charity may only be paid where the constitution contains such a power and it can be considered to be in the best interests of the charity. It means that, in general, the founder of a charity who wishes to be paid cannot be on the board and must give up strategic control of the organisation to a volunteer board, which is often unacceptable.
- The definition of community interest that will apply to CICs will be wider than the public interest test for charity.
- CICs will be specifically identified with social enterprise. Some organisations may feel that consequently this is a more suitable than charitable status.

A Social Enterprise is defined as a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.

More on the ‘Asset lock’:

The Asset Lock is a fundamental feature of CICs. It is important that you understand the concept before setting up a CIC as it has permanent long-term consequences.

“Asset Lock” is a general term used to cover all the provisions designed to ensure that the assets of the CIC (including any profits or other surpluses generated by its activities) are used for the benefit of the community.

The transfer must satisfy certain requirements. This means that, subject to the CIC meeting its obligations, its assets must either be retained within the CIC to be used for the community purposes for which it was formed, or, if they are transferred out of the CIC, the transfer must satisfy one of the following requirements:

- it is made for full consideration (i.e. at market value), so that the CIC retains the value of the assets transferred;
- it is made to another asset locked body (a CIC or charity, or non-GB based equivalent) which is specified in the CIC's memorandum or articles of association;
- it is made to another asset locked body with the consent of the Regulator;
or
- It is otherwise made for the benefit of the community.

Provision to this effect, as prescribed in the Regulations, must be included in a CIC's memorandum or articles of association. CICs are permitted to adopt asset lock rules that impose more stringent requirements, provided they also include these basic provisions.

The asset lock will be established in legislation, and will prohibit CICs from distributing their assets or profits to their members, except to the extent permitted where CICs issue equity. The lock will not prevent CICs from using their assets efficiently in pursuit of community benefit; for instance, they will be able to use assets as collateral for finance. The regulator will be responsible for ensuring that the asset lock is maintained, and stakeholders who believe that it is being breached will be able to ask the regulator to take action.

The tax position is apparently not yet fully settled.

CICs can issue shares but the return is capped and there are other restraints on profits.

It would be absolutely essential to take Charity Commission, legal and accountancy advice before contemplating a change from a charity to a CIC or vice versa or creating a Bradninch CIC.