



# Companies (Audit, Investigations and Community Enterprise) Act 2004

## 2004 CHAPTER 27

### PART 2

#### COMMUNITY INTEREST COMPANIES

##### *Becoming a community interest company*

#### **38 Existing companies: decisions etc.**

- (1) On receiving under section 37 the copies of the special resolutions, the memorandum and articles as altered by the special resolutions and the prescribed conversion documents, the registrar of companies must (instead of recording the special resolutions and entering a new name on the register)—
  - (a) forward a copy of each of the documents to the Regulator, and
  - (b) retain the documents pending the Regulator's decision.
- (2) The alterations of the memorandum and articles made by the special resolutions are to take effect only as provided by this section.
- (3) The Regulator must decide whether the company is eligible to become a community interest company.
- (4) A company is eligible to become a community interest company if—
  - (a) the memorandum and articles as altered by the special resolutions comply with the requirements imposed by and by virtue of section 32 and the company's name as so altered complies with section 33, and
  - (b) the Regulator, having regard to the special resolutions, the memorandum and articles as altered, the prescribed conversion documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).
- (6) If the Regulator gives notice of a decision that the company is eligible to become a community interest company, section 28(6) of the Companies Act 1985 (registration of new name) applies; and if the registrar of companies enters the new name of the company on the register the registrar must also retain and record the special resolutions and the prescribed conversion documents.
- (7) On the special resolutions being recorded, the alterations to the company's articles and memorandum made by the special resolutions take effect.
- (8) The certificate of incorporation under section 28(6) of the Companies Act 1985 (c. 6) is to contain a statement that the company is a community interest company.
- (9) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.
- (10) If the Regulator decides that the company is not eligible to become a community interest company, the company may appeal to the Appeal Officer against the decision.