



Companies (Audit, Investigations and Community Enterprise) Act 2004

2004 CHAPTER 27

PART 2

COMMUNITY INTEREST COMPANIES

Becoming a community interest company

36 New companies

- (1) If a company is to be formed as a community interest company, the documents delivered to the registrar of companies under section 10 of the Companies Act 1985 (memorandum, articles and statement of names and particulars of directors and secretary) must be accompanied by the prescribed formation documents.
- (2) “The prescribed formation documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the documents delivered under that section, in such form as may be approved in accordance with the regulations.
- (3) On receiving the documents delivered under that section and the prescribed formation documents the registrar of companies must (instead of registering the memorandum and articles)—
 - (a) forward a copy of each of the documents to the Regulator, and
 - (b) retain the documents pending the Regulator’s decision.
- (4) The Regulator must decide whether the company is eligible to be formed as a community interest company.
- (5) A company is eligible to be formed as a community interest company if—
 - (a) the memorandum and articles comply with the requirements imposed by and by virtue of section 32 and the company’s name complies with section 33, and

- (b) the Regulator, having regard to the documents delivered under section 10 of the Companies Act 1985 (c. 6), the prescribed formation documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.
- (6) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).
- (7) If the Regulator gives notice of a decision that the company is eligible to be formed as a community interest company, section 12 of the Companies Act 1985 (registration of memorandum and articles) applies; and if the registrar registers the memorandum and articles he must also retain and record the prescribed formation documents.
- (8) The certificate of incorporation under section 13 of the Companies Act 1985 (effect of registration) 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 be formed as a community interest company, any subscriber to the memorandum may appeal to the Appeal Officer against the decision.

37 Existing companies: requirements

- (1) If a company is to become a community interest company, the company must—
 - (a) by special resolution alter its memorandum to state that it is to be a community interest company,
 - (b) by special resolutions under the Companies Act 1985 make such alterations of its memorandum and articles as it considers necessary to comply with requirements imposed by and by virtue of section 32 or otherwise appropriate in connection with becoming a community interest company, and
 - (c) by special resolution change its name to comply with section 33.
- (2) Section 380(1) of the Companies Act 1985 (forwarding of copies of special resolutions to registrar of companies) must be complied with in relation to each of the special resolutions at the same time.
- (3) If the special resolutions include one under section 4 or 17 of the Companies Act 1985 (alterations of memorandum)—
 - (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
 - (b) section 380(1) has effect in relation to them as if it referred to 15 days after the relevant date.
- (4) If an application is made under section 5 of the Companies Act 1985 (c. 6) (objection to alteration of memorandum under section 4 or 17), the relevant date is—
 - (a) the date on which the court determines the application (or, if there is more than one application, the date on which the last to be determined by the court is determined), or
 - (b) such later date as the court may order.

- (5) If there is no application under section 5 of that Act, the relevant date is the end of the period for making such an application.
- (6) The copies of the special resolutions forwarded to the registrar of companies must be accompanied by—
 - (a) a copy of the memorandum and articles of the company as altered by the special resolutions, and
 - (b) the prescribed conversion documents.
- (7) “The prescribed conversion documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the copies of the special resolutions, in such form as may be approved in accordance with the regulations.

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.
- (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.

39 Existing companies: charities

- (1) A charitable company may not by special resolution change its name to comply with section 33 without the prior written consent of the Charity Commissioners.
- (2) If a charitable company contravenes subsection (1), the Charity Commissioners may apply to the High Court for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985.
- (3) If a charitable company becomes a community interest company, that does not affect the application of—
 - (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
 - (b) any property representing income which has previously accrued, or
 - (c) the income from any such property.
- (4) “Charitable company” means a company which is a charity, other than one to which section 40 applies.

40 Existing companies: Scottish charities

- (1) A Scottish charitable company may not become a community interest company.
- (2) If a Scottish charitable company purports by special resolution to change its name to comply with section 33, the Commissioners of Inland Revenue may apply to the Court of Session for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985.
- (3) Regulations may repeal subsections (1) and (2); and subsections (4) to (7) have effect on and after the day on which regulations under this subsection come into force.
- (4) A Scottish charitable company may not by special resolution change its name to comply with section 33 without the prior written consent—
 - (a) if the company's registered office is situated in Scotland, of the Scottish Charity Regulator, or
 - (b) if the company's registered office is situated in England and Wales (or Wales), of both the Scottish Charity Regulator and the Charity Commissioners.
- (5) If a Scottish charitable company contravenes subsection (4)(a), the Scottish Charity Regulator may apply to the Court of Session for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985 (c. 6).
- (6) If a Scottish charitable company contravenes subsection (4)(b), the Scottish Charity Regulator or the Charity Commissioners may apply to the High Court for such an order.

- (7) If a Scottish charitable company becomes a community interest company, that does not affect the application of—
- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
 - (b) any property representing income which has previously accrued, or
 - (c) the income from any such property.
- (8) In this section “Scottish charitable company” means a company which—
- (a) is a Scottish charity, or
 - (b) not being a Scottish charity, is registered in Scotland and established for charitable purposes only.
- (9) Regulations under subsection (3) may define the expression “the Scottish Charity Regulator” for the purposes of this section.