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| The Ayrshire Community Trust |
| Setting Up a Community Interest Company |
| A Basic Guide |





**Community Interest Company (CIC)**

Can you answer **YES** to the following Statements?

1. My company will benefit the community and / or support people and / or protect the environment.
2. My company has the potential to involve volunteers.
3. My company has the potential to be commercial and trade either services or products.
4. There is only one Director at present.
5. I want to retain control of the Governance of my company.
6. I want to be remunerated for delivering activities / services on behalf of my company.

These are the broad decisions that will inform how your social enterprise should operate.

Answering YES to these statements suggests that your company would fit well as a Community Interest Company (CIC).

Please be aware that even by answering YES to these statements, you could still operate as a Charity, but **ONLY** if there are 3 people willing to become Directors / Trustees. You will need a minimum of 4 people if one Director / Trustees wishes to be remunerated.

***Ask The Ayrshire Community Trust to explain the pros and cons of becoming a two-tier Scottish Charitable Incorporated Organisation (SCIO) in order to make an informed decision.***

**Why do I need a Legal Structure for my Social Enterprise?**

At their core, social enterprises are simply a group of interested people, looking to improve their local services and communities. However, running public services involves owning property, employing staff and entering into contracts. Because these activities can sometimes lead to claims (such as employment grievances), those running a social enterprise are advised not to do so in their own names.

Creating an appropriate legal form for the social enterprise means that the social enterprise itself will be liable for any claims, rather than those involved in creating it.

A Community Interest Company (CIC) is a Limited Company with special features to ensure that it works for the benefit of the community. It differs from a charitable company in that it can be established for any legal purpose which benefits the community, whereas a charity must have exclusively charitable purposes. A further advantage is that a CIC is subject to lighter regulation than a charitable company. On the downside, a CIC may not be eligible for the wider range of funding which is available to charities.

CICs commit their assets and profits permanently to the community by means of an “asset lock”, ensuring that assets cannot be distributed to shareholders. This basically means that if in the event that company is dissolved, the company’s assets will be re-distributed back into the community.

They report to the Regulator of Community Interest Companies. A big advantage is that a CIC’s not-for-profit status is visible as well as assured.

It is worth noting that a CIC cannot register as a Charity, but that a Charity may set up its trading subsidiary as a CIC.

CICs have to register with Companies House as either a **Company Limited by Guarantee** or by a **Company Limited by Shares** and then apply to the new Regulator for CIC status.

**How do I register a Community Interest Company?**

To form a new CIC you need to deliver 5 things to the following to the appropriate Registrar of Companies for England and Wales, Scotland, or Northern Ireland:

* **Memorandum of Association**
* A printed copy of the **Articles of Association** that complies with the requirements of section 18 of the Companies Act 2006 and related CIC legislation. Please note that a CIC cannot rely on the default Articles under section 20 of the Companies Act 2006. The Articles are therefore known as “bespoke”.
* **Form IN01** requires details of the CICs proposed name; whether limited by shares or guarantee public or private; the first directors (and secretary if applicable), the situation of registered office; a statement of compliance etc.
* **Form CIC36** which is the community interest statement. The purpose of the form CIC36 is to confirm that the CIC will provide benefit to the community. It does this by describing its intended activities who they will help and how.
* A **cheque for £35** made payable to “Companies House”.

**What is the CIC 36 form?**

The information given on the form CIC36 enables the Regulator to decide the company’s eligibility for CIC status. Time should be taken with setting out the objects and proposed activities of the company.

Once delivered and registered the form CIC36 cannot be changed unless the company changes its objects, in which case it would need to deliver to the Registrar of Companies a new community interest statement on a form CIC14, together with other documents

The form CIC36 contains explanatory notes, which you should read carefully before completing the form. Each person who will be a director of the company must sign this form. The form contains the following:

* A declaration that the company will not be: a political party; a political campaigning organisation; or a subsidiary of a political party or political campaigning organisation
* A declaration that the company’s activities will benefit the community, or section of the community.
* A description of the community or section of the community that the company’s activities will benefit.
* A description of the company’s activities.
* A description of how the activities will benefit the community.
* A description of how any surpluses will be used.

The form CIC36 can be seen as the company’s mission statement and therefore the careful drafting of the form will help to focus the directors on the purpose of the company.

The CIC36 form forms the basis of the Community Interest Test.

The CIC36 form can be obtained free of charge from Companies House and is also included in this guide as Appendix 4.

**The Community Interest Test**

Most ordinary companies, even those that provide benefits to the community, are set up and run mainly for the benefit of their own members and employees. However CICs are different. As their primary purpose is to provide benefits to the community, rather than to the individuals who own, run or work in them.

In the legislation, this core principle is set out as the “community interest test”. A company satisfies the community interest test if a reasonable person might consider that its activities (or proposed activities) are carried on for the benefit of the community.

All companies applying to be registered as CICs must provide the Regulator with evidence that they will satisfy the community interest test. To enable the Regulator to decide whether they will satisfy the test, applicants are required to deliver a community interest statement to the Registrar (CIC36 form).

When the Regulator considers whether a company will satisfy the community test, they are taking a view about the likely course of its future activities, and what reasonable people might think of them. Once a CIC has been registered, it must continue to satisfy the test for as long as it remains a CIC. The Regulator may take enforcement action against a CIC if she forms the view that it no longer satisfies the test.

In order to determine whether your company satisfies (or will satisfy) the test, you need to consider:

• the purposes for which it is set up;

• the range of activities in which it will engage; and

• who will be seen as benefiting from its activities.

The community interest test is a test of the motivation or underlying purpose of a CICs activities and how they will benefit its community.

It is not necessary that each activity carried on by the CIC must in itself be directly beneficial to the community. But it is important that everything that a CIC does should in some sense benefit the community.

For example, a CIC whose activities include manufacturing and selling a particular product does not have to show that that product benefits the community. Although that might be one way in which it could satisfy the community interest test in relation to these activities. It could equally well satisfy the test by virtue of the fact that the profits from its sales are to be devoted to charitable or other community benefit purposes.

**What is the Form IN01?**

The form IN01 is a standard form used in the formation of any company and has no particular CIC aspects. It has guidance notes down the side to aid completion.

Section A1: please ensure that the name ending is shown in the company name - for private limited companies these are ‘community interest company’, ‘CIC’ or the Welsh equivalent. If the full company name is not shown on the form, Companies House will reject it.

Section A3: please do not complete - this should be left blank.

Section A7: please tick option 3 - this is because the proposed company is adopting bespoke articles.

You will be completing this form as a Limited Company by Guarantee. You therefore do not have any shares or shareholders so leave this section blank. You will have subscribers and the amount you are subscribing to is £1. This is the amount of your liabilities (under Guarantee).

If you are setting up your CIC with only one Director, please note that the Director MUST also be the Companies Secretary.

The form IN01 can be obtained free of charge from Companies House and is also included in this guide as Appendix 3.

**What is the Memorandum of Association?**

This is simply as list of the first Directors and subscribers to the Company Limited by Guarantee to be printed off and signed by all parties. The form can be found as Appendix 1 of this guide.

**What are the Articles of Association?**

The Articles of Association is the Companies Governing document. It is similar to a constitution belonging to a community group and explains clearly what the company can and cannot do.

Unlike a constitution, the Articles of Association is a legal document and we recommend that you use a ‘model’ template. This means that the document has been drawn up by professionals and contains the all the clauses required by Law. Clauses written in RED but not be changed as this is what will make it a Community Interest Company. If you wish to amend any other clauses within this ‘model’ template, we would recommend that you seek Legal advice.

As your Governing document, it is vital that you understand every clause contained within. Please do not hesitate to ask The Ayrshire Community Trust for clarification should you require it.

One of the most important parts that you will need to complete is an explanation of what your company exists to do. This is known as the ‘Objects’. Please take your time here and make sure that you cross reference it with your CIC36 form.

The Model Articles of Association with a Small Membership means that you have control over the future governance of the company. The Directors are the members and the members are the Directors. Therefore you will have control over who becomes a Director and this would usually be dome through an application process. It also means that only the Directors vote at an AGM as they are the membership.

As long as you trust who you bring on board as a Director, you will have control of the Governance. Please remember that each Director has a vote, so be careful who bring on board and ensure that have the skills that you need.

The Articles of Association with Small Membership can be found as Appendix 2 of this guide.

***Please note, in order to access Grant Funding, it is advisable to have a minimum of 3 unrelated Company Directors*.**

**Statutory documents placed on the public record**

The forms CIC36, IN01 and the Memorandum and Articles will be placed on the public record by the Registrar and are open to public inspection.

If you wish to provide the Regulator with additional material in support of your application you may do so in a separate letter which will not be placed on the public record. It must be emphasised that this is an additional opportunity to provide the Regulator with further information and not a substitute for fully completing the form CIC36.

**Where to file documents and details of fees**

Registrar of Companies (Scotland)

Companies House

4th Floor

Edinburgh Quay 2

139 Fountainbridge

Edinburgh

EH3 9FF

Cheque Made payable to ‘Companies House’ for £35.00.