

Chapter 5: Constitutional Documents - Contents

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5.1. Memoranda and articles of association (constitutional documents)

Every community interest company must have a memorandum and up to date articles of association, a copy of which must be delivered to the Registrar of Companies. These are the key documents that establish the company's constitution (or rules for the internal operation).

The memorandum and articles together with the application form (Form IN01) and community interest statement provide the main evidence upon which the Regulator will determine whether the company is eligible to be formed as a community interest company.

Given the importance of these documents great care should be taken over their preparation and you are strongly advised to seek professional help, or to use the services of a company formation agent.

5.1.1. The memoranda of association for a CIC

The memoranda of association, as required by the Companies Act 2006, is a short document which confirms that the subscribers wish to form a company and agree to become a member of the company. If the company is limited by shares they agree to take at least one share in the company.

5.1.2. The articles of association of a company

The articles set out key information regarding the internal allocation of powers between the directors and members of the company, the rules which govern a company's internal affairs, such as, appointment and powers of directors, conduct of meetings and rules for the transfer of shares.

5.1.3. Articles of association for a CIC

For a company to be eligible to be formed as, or converted to a CIC, the articles must comply with the detailed requirements in the Companies (Audit, Investigations and Community Enterprise) Act 2004 ("the Act") and the Community Interest Company Regulations 2005 ("the Regulations"). These require CICs to include in their articles certain specified provisions about the company's form, asset lock and governance (see 5.2. below).

Any provisions in a CIC's articles, which are inconsistent with the Act and Regulations, will be of no effect.

5.1.3.1. Model articles provided under the Companies Act 2006

In general companies limited by shares can be established without registering any articles at Companies House in which case the relevant model articles in force on the date the company is registered apply to them by default in their entirety Companies Act 2006 section 20.

This option is not available to a CIC limited by shares, although if a CIC limited by shares omits to cover in its articles a point which is covered by the relevant model articles, the relevant provisions of model articles will apply on that point.

The standard model articles of association for various types of company provided by the Companies Act 2006 may be adapted for a CIC to include the provisions required by Part 3 of the Community Interest Company Regulations 2005.

5.1.3.2. Model memoranda and articles for community interest companies

To assist potential CICs and their advisers we have published models of suitable memoranda and articles for various types of CICs, which incorporate the statutory requirements. These are included in Annex A of this guidance and on our website. It must be emphasised that these are not prescribed documents, but are provided for guidance and can be freely downloaded, but no CIC is obliged to use them.

5.1.3.3. The objects of a community interest company

Unless a company's articles specifically restrict the objects of a company its objects are treated as unrestricted under section 31 of the Companies Act 2006. This means that unless a company makes a deliberate choice to restrict its objects, the objects will have no bearing on what it can do. Some companies will continue to restrict their objects. Companies that are charities will need to restrict their objects under charity legislation and some community interest companies may choose to do so.

The objects define what the company can and intends to do. The first paragraph usually defines the principal object and subsequent paragraphs detail a number of subsidiary objects, such as, the power to buy and sell property for the purposes of the business. Ordinary companies may choose not to include objects in its articles so that they remain unrestricted, whereas others may be more specific, for example, "to undertake the building, repair, purchase and sale of yachts".

Both options are open to CICs. However, to show whether a company meets the community interest test (and having regard to the principle of transparency) we would regard it as best practice to clearly define in the company's objects both the nature of the CIC's proposed activities and the community, which it intends to benefit. For example, "to provide day care and transport facilities for the elderly and physically disadvantaged in North Essex" [See Chapter 2].

The Regulator considers that if a CIC chose unrestricted objects, best practice (and the need for transparency) dictates that the intended activities of the company, the community that will benefit, and the way in which it will benefit should be spelt out in explicit terms in the community interest statement.

It would be very difficult to conclude that the company satisfied the community interest test if, taking the memorandum and articles, application form and community interest statement together, these points were not clear beyond doubt.

The objects can be changed after incorporation, subject to the approval of the members and the Regulator. You need, however, to be clear for your own purposes just what you intend to do and whom you intend to benefit before you seek incorporation as a CIC. Clearly defined objects, which can for example be quoted in a business plan, are more likely to inspire confidence in potential investors, loan providers, the community, other stakeholders and the general public.

You may also feel that defining the objects fairly closely will help to ensure that the enterprise will stay within the original intentions of the founders and any change of direction will be the subject of proper discussion at the meeting of members required to alter the objects. On the other hand, you may wish to avoid too narrow a definition of the company's objects, as this could expose the directors to legal action from disgruntled members in cases where the company, while nevertheless benefiting the community, has strayed outside its original purposes.

5.1.4. The effect of the Companies Act 2006 on an existing CIC

If the community interest company is in existence immediately prior to 1st October 2009 it may instead include in its articles the provisions prescribed in Schedule 1, 2 or 3 (as applicable) as Schedule 1, 2 or 3 read immediately prior to that date.

5.1.4. Application to register a company (Form IN01)

Please refer to the Companies house website for further details
www.companieshouse.gov.uk

5.2. Legislation specifying provisions required in the articles of a CIC

For a company to be eligible to be formed or converted to a CIC the articles must also comply with the requirements in the:

- Companies (Audit, Investigations and Community Enterprise) Act 2004
- Community Interest Company Regulations 2005
- The Companies Act 2006 (Consequential Amendments) Order 2009, and
- The Community Interest Company (Amendment) Regulations 2009

These are concerned with the preservation of the asset lock and other essential CIC features.

5.2.1. The specified provisions

The articles of a CIC must state that it is to be a CIC.

In addition, the Regulations contain three alternative schedules of specific provisions, which must be included in the articles. Which schedule of provisions you include will depend on your CIC's capital structure and dividend intentions.

- ❖ A company limited by guarantee without a share capital must include the provisions in Schedule 1 (as highlighted in the model memoranda and articles of association).
- ❖ A company limited by shares (or a company limited by guarantee with a share capital) must include either the provisions in Schedule 2 or the provisions in Schedule 3 (as highlighted in the model memoranda and articles of association).
- ❖ A company which adopts the Schedule 2 provisions will only be able to pay dividends, and otherwise transfer assets for less than full consideration, to other asset-locked bodies or otherwise for the benefit of the community (as highlighted in the model memoranda and articles of association).
- ❖ A company which adopts Schedule 3 has more freedom and can, for example, pay dividends (subject to the dividend cap) to shareholders who are not asset-locked bodies (as highlighted in the model memoranda and articles of association).

Once you have chosen whether your CIC should be limited by shares, rather than limited by guarantee, the choice of whether to adopt the Schedule 2, or Schedule 3, provisions is probably the major question you will have to consider with your advisers in preparing to form a CIC.

The subscribers (i.e. the first intended shareholders or the guarantors) must sign the

memorandum. The memorandum and articles delivered by a CIC must be printed, or in some other form, approved by the Registrar.

5.2.2. Model memoranda and articles for community interest companies

To assist potential CICs and their advisers we have published models of suitable memoranda and articles for various types of CICs, which incorporate the statutory requirements. These are included in Annex A of this guidance and on our [website](#). It must be emphasised that these are not prescribed documents, but are provided for guidance and can be freely downloaded, but no CIC is obliged to use them.

5.3. Altering the articles of association (excluding the objects).

As a community interest company develops its constitutional needs may change, resulting in a CIC requiring an amendment to the rules under which it operates. This can be achieved by altering the articles, as appropriate, by passing a special resolution of the company unless the articles provides that this cannot be done (see the Companies House booklet “GP3 Life of the company – Part 2 Event driven requirements”).

A copy of the resolution must be sent to the Registrar of Companies for registration together with a printed copy of the articles incorporating the amendments. All copies of the articles subsequently issued by the company must incorporate the change(s).

Providing it continues to comply with company law an ordinary company can (unless its articles provides otherwise) make any changes it wishes to its articles (other than to the clause stating where its registered office is to be situated).

A CIC, however, must in addition at all times meet the requirements of the Companies (Audit, Investigations and Community Interest) Act 2004 (“the Act”) and the Community interest company Regulations 2005 (“the Regulations”). This means that there are certain statutory clauses that it cannot change, unless the statutory requirements themselves change (see Chapter 5.1 above). A change, which is inconsistent with the Act and Regulations, is of no effect (section 32(5) of the Companies (Audit, Investigations and Community Enterprise) Act 2005).

There are special procedures if a CIC wants to change its object statement (see chapter 5.4).

5.3.1. Change of company name

Chapter 2 explains the requirements for CIC names. Providing the new name continues to meet those requirements and the general requirements as to company names there is no restriction on a CIC changing its name by passing a special resolution. A signed copy of the resolution and articles as altered must be sent to the Registrar together with a form NM01 and the appropriate fee (See Chapter 4). The Registrar will issue a Certificate of Incorporation on Change of Name. The name change takes effect on issue of the new certificate.

5.3.2. Change to the company type and/or share capital

The application form IN01 contains a statement that the liability of the members of the company is limited and details of whether it is limited by guarantee or a public or private company limited by shares together with details of the capital structure if it is limited by shares.

There is little scope to change the status of a CIC, although a CIC company limited by shares can change from a private to a public company and vice versa. In particular:

- A CIC cannot become an unlimited company.
- No company can change from a company limited by shares to a company limited by guarantee or vice versa.

A CIC may make changes to its capital structure (see Chapter 6 with regard to redemption and repurchase of shares and reduction of capital).

For a private company to reregister as a public company or vice versa it must follow a detailed procedure prescribed by company legislation and set out in Companies House booklet “GP3 Life of the company – Part 2 Event driven requirements”. These are complicated matters upon which early professional advice should be taken.

5.4. Altering the object statement of the articles of association

5.4.1. Documents to be delivered to the Registrar

To change its object statement, a CIC must deliver to the appropriate Registrar of Companies the following documents:

- ❖ A Form CC04, which is a notice under section 31(2)(a) of the Companies Act 2006
- ❖ A copy of the special resolution changing the object statement of the articles
- ❖ A printed copy of the updated articles, as altered.
- ❖ A completed form CIC14, which contains the community interest statement and a statement of the steps that have been taken to bring the proposed alteration to the notice of the persons affected by the company's activities signed by each of the company's directors.

The Registrar will refer the documents to the Regulator and will only register them if the Regulator gives her approval. The change does not take effect until the documents are registered.

5.4.2. Approval by the Regulator

The Regulator will only approve the change if she is satisfied that:

- ❖ after the change the articles will still comply with the CIC legislation;
- ❖ the company will still satisfy the community interest test (see Chapter 4 of this guidance); and that
- ❖ sufficient steps have been taken to bring the change to the notice of those affected by the company's activities.

If the Regulator considers that she should refuse her approval she will try to resolve the issue informally with the company before proceeding to formal refusal.

These requirements do not apply to the conversion of a CIC to a charity (see Chapter 10).