



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

## 2004 CHAPTER 27

### PART 2

#### COMMUNITY INTEREST COMPANIES

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

#### **[F136] Formation of company as a community interest company**

- (1) If a company is to be formed as a community interest company, the documents delivered to the registrar of companies under section 9 of the Companies Act 2006 (registration documents) must be accompanied by the prescribed formation documents.
- (2) The “prescribed formation documents” means such declarations or statements as are required by regulations to accompany the application, 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 must (instead of registering the documents)—
  - (a) forward a copy of each of the documents to the Regulator, and
  - (b) retain the documents pending the Regulator’s decision.

#### **Textual Amendments**

- F1** Ss. 36-36B substituted for s. 36 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 226](#) (with art. 10)

*Status: Point in time view as at 26/05/2015.*

*Changes to legislation: There are currently no known outstanding effects for the Companies (Audit, Investigations and Community Enterprise) Act 2004, Cross Heading: Becoming a community interest company. (See end of Document for details)*

### **36A. Formation as community interest company: decision on eligibility**

- (1) The Regulator must decide whether the company is eligible to be formed as a community interest company.
- (2) A company is eligible to be formed as a community interest company if—
  - (a) its articles comply with the requirements imposed by and by virtue of section 32,
  - (b) its proposed name complies with section 33, and
  - (c) the Regulator, having regard to the application and accompanying documents and any other relevant considerations, considers that the company—
    - (i) will satisfy the community interest test, and
    - (ii) is not an excluded company.
- (3) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

#### **Textual Amendments**

- F1** Ss. 36-36B substituted for s. 36 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 226](#) (with [art. 10](#))

### **36B. Formation as community interest company: implementation of decision on eligibility**

- (1) If the Regulator decides that the company is eligible to be formed as a community interest company, the registrar of companies must—
  - (a) proceed in accordance with sections 14 and 15 of the Companies Act 2006 (registration and issue of certificate of incorporation), and
  - (b) if the company is entered on the register, retain and record the prescribed formation documents.
- (2) The certificate of incorporation must state that the company is a community interest company and is conclusive evidence that the company is a community interest company.
- (3) If the Regulator decides that the company is not eligible to be formed as a community interest company, any subscriber to the memorandum of association may appeal to the Appeal Officer against the decision.]

#### **Textual Amendments**

- F1** Ss. 36-36B substituted for s. 36 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 226](#) (with [art. 10](#))

### **[<sup>F2</sup>37 Company becoming a community interest company**

- (1) If a company is to become a community interest company—
  - (a) the company must by special resolution—

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- (i) state that it is to be a community interest company,
    - (ii) make such alterations of its 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
    - (iii) change its name to comply with section 33;
  - (b) the conditions specified below must be met; and
  - (c) an application must be delivered to the registrar of companies in accordance with section 37C together with the other documents required by that section.
- (2) The conditions referred to in subsection (1)(b) are that—
  - (a) where no application under section 37A for cancellation of the special resolutions has been made—
    - (i) having regard to the number of members who consented to or voted in favour of the resolutions, no such application may be made, or
    - (ii) the period within which such an application could be made has expired, or
  - (b) where such an application has been made—
    - (i) the application has been withdrawn, or
    - (ii) an order has been made confirming the resolutions and a copy of that order has been delivered to the registrar.
- (3) Section 30 of the Companies Act 2006 (copies of resolutions to be forwarded to the registrar) applies to the special resolutions as follows—
  - (a) that section is complied with by forwarding copies of the resolutions together with the application in accordance with section 37C,
  - (b) copies of the resolutions must not be so forwarded before the relevant date, and
  - (c) subsection (1) of that section has effect in relation to the resolutions as if it referred to 15 days after the relevant date.
- (4) The relevant date is—
  - (a) if an application is made under section 37A for cancellation of the special resolutions—
    - (i) 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
    - (ii) such later date as the court may order;
  - (b) if there is no such application—
    - (i) if having regard to the number of members who consented to or voted in favour of the resolutions, no such application may be made, the date on which the resolutions were passed or made (or, if the resolutions were passed or made on different days, the date on which the last of them was passed or made);
    - (ii) in any other case, the end of the period for making such an application.

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### Textual Amendments

- F2** Ss. 37-37C substituted for s. 37 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 227\(1\)](#) (with art. 10)

## 37A. Becoming a community interest company: application to court to cancel resolutions

- (1) Where special resolutions have been passed with a view to the company becoming a community interest company, an application to the court for the cancellation of the resolutions may be made—
  - (a) by the holders of not less in the aggregate than 15% in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares);
  - (b) if the company is not limited by shares, by not less than 15% of its members; or
  - (c) by the holders of not less than 15% of the company's debentures entitling the holders to object to an alteration of its objects;

but not by a person who has consented to or voted in favour of the resolutions.
- (2) The application—
  - (a) must be made within 28 days after the date on which the resolutions are passed or made (or, if the resolutions are passed or made on different days, the date on which the last of them is passed or made), and
  - (b) may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for the purpose.
- (3) On the hearing of the application the court shall make an order either cancelling or confirming the resolutions.
- (4) The court may—
  - (a) make that order on such terms and conditions as it thinks fit,
  - (b) if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and
  - (c) give such directions, and make such orders, as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court's order may, if the court thinks fit—
  - (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital; and
  - (b) make such alteration in the company's articles as may be required in consequence of that provision.
- (6) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments to its articles without the leave of the court.

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#### Textual Amendments

- F2** Ss. 37-37C substituted for s. 37 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 227\(1\)](#) (with art. 10)

### **37B. Becoming a community interest company: notice to registrar of court application or order**

- (1) On making an application under section 37A (application to court to cancel resolutions) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar of companies.

This is without prejudice to any provision of rules of court as to service of notice of the application.

- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.
- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (3) an offence is committed by—
- the company, and
  - every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### Textual Amendments

- F2** Ss. 37-37C substituted for s. 37 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 227\(1\)](#) (with art. 10)

### **37C. Becoming a community interest company: application and accompanying documents**

- (1) An application to become a community interest company must be accompanied by—
- a copy of the special resolutions,
  - a copy of the company's articles as proposed to be amended, and
  - the prescribed conversion documents.

- (2) The "prescribed conversion documents" means such declarations or statements as are required by regulations to accompany the application, in such form as may be approved in accordance with the regulations.

- (3) On receiving an application to become a community interest company together with the other documents required to accompany it, the registrar of companies must (instead of recording the documents and entering a new name on the register)—

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- (a) forward a copy of each of the documents to the Regulator, and
- (b) retain the documents pending the Regulator's decision.]

**Textual Amendments**

**F2** Ss. 37-37C substituted for s. 37 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 227(1)** (with art. 10)

**[<sup>F3</sup>38] Becoming a community interest company: decision by Regulator**

- (1) The Regulator must decide whether the company is eligible to become a community interest company.
- (2) A company is eligible to become a community interest company if—
  - (a) its articles as proposed to be amended comply with the requirements imposed by and by virtue of section 32,
  - (b) its proposed name complies with section 33, and
  - (c) the Regulator, having regard to the application and accompanying documents and any other relevant considerations, considers that the company—
    - (i) will satisfy the community interest test, and
    - (ii) is not an excluded company.
- (3) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

**Textual Amendments**

**F3** Ss. 38, 38A substituted for s. 38 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 227(2)** (with art. 10)

**38A. Becoming a community interest company: implementation of decision on eligibility**

- (1) If the Regulator gives notice of a decision that the company is eligible to become a community interest company, the registrar of companies must—
  - (a) proceed in accordance with section 80 of the Companies Act 2006 (change of name: registration and issue of new certificate of incorporation), and
  - (b) if the registrar enters the new name of the company on the register, retain and record the documents mentioned in section 37C(3).
- (2) The new certificate of incorporation must state—
  - (a) that it is issued on the company's conversion to a community interest company,
  - (b) the date on which it is issued, and
  - (c) that the company is a community interest company.
- (3) On the issue of the certificate—

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- (a) the company by virtue of the issue of the certificate becomes a community interest company, and
  - (b) the changes in the company's name and articles take effect.
- (4) The certificate is conclusive evidence that the company is a community interest company.
- (5) 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.]

#### Textual Amendments

- F3** Ss. 38, 38A substituted for s. 38 (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 227(2)** (with art. 10)

### 39 [F4]Becoming a community interest company: English charities]

- (1) A [F5company that is an English charity] may not [F6]become a community interest company] without the prior written consent of the [F7Charity Commission].
- (2) If a [F5company that is an English charity] contravenes subsection (1), the [F7Charity Commission] may apply to the High Court for an order quashing any altered certificate of incorporation issued under [F8section 38A] .
- (3) If a [F5company that is an English charity] 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.

F9(4) . . . . .

#### Textual Amendments

- F4** S. 39 heading substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 228(2)** (with art. 10)
- F5** Words in s. 39 substituted (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), art. 1(3), **Sch. 4 para. 9(b)** (with art. 11(1))
- F6** Words in s. 39(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 228(3)** (with art. 10)
- F7** Words in s. 39(1)(2) substituted (27.2.2007) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 201**; [S.I. 2007/309](#), art. 2, Sch.; [S.I. 2007/309](#), art. 2, Sch.
- F8** Words in s. 39(2) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 228(4)** (with art. 10)

*Status: Point in time view as at 26/05/2015.*

**Changes to legislation:** There are currently no known outstanding effects for the Companies (Audit, Investigations and Community Enterprise) Act 2004, Cross Heading: Becoming a community interest company. (See end of Document for details)

**F9** S. 39(4) omitted (6.4.2007) by virtue of [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), art. 1(3), [Sch. 4 para. 9\(d\)](#) (with art. 11(1))

**Commencement Information**

**II** S. 39 in force at 1.7.2005 by [S.I. 2004/3322](#), art. 2(3), [Sch. 3](#)

**40** [<sup>F10</sup>**Becoming a community interest company: Scottish charities**]

- (1) [<sup>F11</sup>A [<sup>F12</sup>company that is a Scottish charity] may not become a community interest company.]
- (2) [<sup>F11</sup>If a [<sup>F12</sup>company that is a Scottish charity] 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 [<sup>F13</sup>the 1985 Act].]
- (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 [<sup>F12</sup>Scottish charitable company] may not [<sup>F14</sup>become a community interest company] 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 [<sup>F15</sup>Charity Commission].
- (5) If a [<sup>F12</sup>company that is a Scottish charity] 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 [<sup>F16</sup>section 38A].
- (6) If a [<sup>F12</sup>company that is a Scottish charity] contravenes subsection (4)(b), the Scottish Charity Regulator or the [<sup>F17</sup>Charity Commission] may apply to the High Court for such an order.
- (7) If a [<sup>F12</sup>company that is a Scottish charity] becomes a community interest company, [<sup>F18</sup>it shall continue to be under a duty to apply—
  - (a) any property previously acquired, or any property representing property previously acquired,
  - (b) any property representing income which has previously accrued, or
  - (c) the income from any such property.
 in accordance with its purposes as set out in its entry in the Scottish Charity Register immediately before it became a community interest company.]

<sup>F19</sup>(8) .....

<sup>F20</sup>(9) .....

**Textual Amendments**

**F10** S. 40 heading substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 229\(2\)](#) (with art. 10)



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- F11** S. 40(1)(2) repealed (E.W.S.) (1.10.2009) by The Community Interest Company (Amendment) Regulations 2009 (S.I. 2009/1942), regs. 1(1), 2
- F12** Words in s. 40 substituted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 4 para. 10(a)** (with art. 11(1))
- F13** Words in s. 40(2) substituted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 4 para. 10(b)** (with art. 11(1))
- F14** Words in s. 40(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 229(3)** (with art. 10)
- F15** Words in s. 40(4)(b) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 202**; S.I. 2007/309, art. 2, Sch.
- F16** Words in s. 40(5) substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 229(4)** (with art. 10)
- F17** Words in s. 40(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 202**; S.I. 2007/309, art. 2, Sch.
- F18** Words in s. 40(7) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 8(3)(a)**
- F19** S. 40(8) omitted (6.4.2007) by virtue of The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 4 para. 10(c)** (with art. 11(1))
- F20** S. 40(9) repealed (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 8(3)(c)**

#### Commencement Information

- I2** S. 40 in force at 1.7.2005 by S.I. 2004/3322, art. 2(3), **Sch. 3**

#### [<sup>F21</sup>40A. [<sup>F22</sup>Becoming a community interest company: Northern Ireland charities]

- (1) A company that is a Northern Ireland charity may not become a community interest company.
- (2) If a company that is a Northern Ireland charity purports [<sup>F23</sup>to become a community interest company], the Commissioners of Her Majesty's Revenue and Customs may apply to the High Court for an order quashing any altered certificate of incorporation under [<sup>F24</sup>section 38A]. ]

#### Textual Amendments

- F21** S. 40A inserted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 4 para. 11** (with art. 11(1))
- F22** S. 40A heading substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 230(2)** (with art. 10)
- F23** Words in s. 40A(2) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 230(3)(a)** (with art. 10)

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**Changes to legislation:** *There are currently no known outstanding effects for the Companies (Audit, Investigations and Community Enterprise) Act 2004, Cross Heading: Becoming a community interest company. (See end of Document for details)*

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**F24** Words in s. 40A(2) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 230(3)(b)** (with art. 10)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Companies (Audit, Investigations and Community Enterprise) Act 2004, Cross Heading: Becoming a community interest company.