

ARRIVAL OF COMMUNITY INTEREST COMPANIES

It is now possible to form Community Interest Companies ("CICs"). CICs have been specifically devised as a corporate vehicle for social enterprises in circumstances where a charitable company (entered on the Register of Charities) is not appropriate.

CICs - brief overview

CICs are companies and have a "constitution" set out in Memorandum and Articles of Association. Therefore, CICs must also comply with company law. CICs may be companies limited by shares or by guarantee. To register, CICs must deliver the usual documents to the Registrar of companies together with a "community interest statement". This confirms the applicant's intention to serve the community and to pursue activities in the community interest. The Registrar then refers the application to the CIC Regulator, who will consider whether the application meets the "community interest test" to become a CIC.

The CIC Regulator is John Hanlon, who was appointed by ministers of the Department of Trade and Industry. The DTI has indicated that the CIC regulations will be "light touch".

The legislation limits the ability of CICs to transfer assets and distribute profits to their members. This "asset lock" is one of the main characteristics of a CIC. CICs limited by shares are able to encourage investment by issuing shares that pay a dividend to investors. The dividend is capped by the Regulator to safeguard the "asset lock". This allows investors in CICs to receive a modest return.

Even if a CIC has charitable purposes, it will not be able to register as a charity. As a result, CICs are unable to claim the tax reliefs or exemptions, which are only available to charities or for charitable giving.

Why set up a CIC and not a charity?

The DTI states that the types of people who will want to set up CICs are "typically entrepreneurs who want to do good in a form other than charity" because:

- they are looking to work for community benefit with the relative freedom of the non-charitable company form, but with a clear assurance of not-for-profit distribution status;
- charity trustees may only be paid where the constitution contains such a power and it can be considered to be in the best interests of the charity. This restriction does not apply to CICs because CICs are not charities. Therefore, the founder of a social enterprise that takes the form of a CIC who wishes to be paid, may be on the board and does not have to give up strategic control to a "volunteer board";
- the definition of "community interest" that applies to CICs is wider than the public interest test for charities. The test is whether a reasonable person could consider the CIC activities to benefit the community.
- CICs are specifically identified with social enterprise and therefore, some organisations might feel that this is more suitable than charitable status.

It is possible for a charitable company to convert to a CIC and vice versa. It is also possible for charities to establish CICs as subsidiaries.

Advantages of CICs

Some possible advantages to CICs are that they are incorporated bodies under the Companies Act and should be easy to set up. CICs are incorporated bodies, and have a separate legal personality. Therefore, the liabilities of their members and directors will be limited.

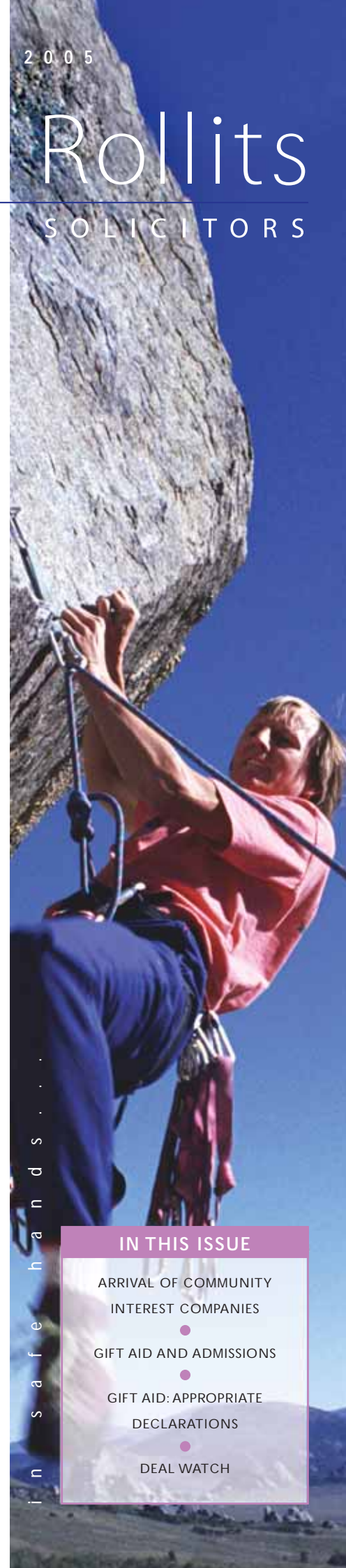
The DTI hopes that the social nature of CICs will mean that they will be able to attract various specialised sources of funding and grants related to their specific activities and area of operation.

CICs are not charities and do not have to comply with charities legislation or be regulated by the Charity Commission.

Disadvantages of CICs

Some possible disadvantages to CICs are that significant tax breaks available to charities are not available to CICs. CICs do not have charity tax status. Similarly, CICs are not eligible for the Gift Aid Scheme that enables tax to be reclaimed on donations made by individuals. CICs are unable to register as charities and cannot have registered charitable status, which can attract funding. It is not yet clear how many specialised sources of funding will evolve for CICs.

There is also, of course, an element of the unknown. The first organisations have now registered as CICs, but CICs are a new structure and it remains to be seen how effective they will be.



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GIFT AID AND ADMISSIONS

Charities are able to reclaim tax paid by individuals on donations under the Gift Aid scheme. The Gift Aid scheme limits the benefits that individuals can receive in exchange for making donations. If an individual receives a benefit in return for his or her donation that exceeds the maximum prescribed limit, the donation will not come under the Gift Aid scheme.

At present, heritage and conservation charities can take advantage of an exemption whereby they can offer free or reduced rate admission to the public in exchange for a donation that will come under the Gift Aid scheme. This is because the free or reduced rate admission is not currently considered a "benefit" for Gift Aid purposes.

However, the Budget 2005 announced amending legislation due to come into place on 6 April 2006, which will prevent charities from simply reclassifying admission fees as donations on which Gift Aid can be claimed.

The new rules will only enable charities to claim Gift Aid on donations made in return for free or reduced rate admission in two alternative situations: -

- (1) where a right of admission is given in return for the donation is valid for at least one year for all times that the general public can also gain admission. The number of visits within this period cannot be restricted;
- (2) where the right of admission is for less than one year; the donation must be at least 10% more than the amount that any member of the public would have to pay to obtain the same right of admission. Therefore, the donation must be at least 10% more than the normal admission charge.

On one hand the new legislation tightens the rules but it also extends the types of charities that may benefit from the exemption (albeit in a tighter form). The new rules enable the benefit of admission to be disregarded in circumstances where (1) or (2) are satisfied and a right of admission is gained in return for a donation to view specified property preserved, maintained, kept or created by a charity in furtherance of its charitable objects. Commercial activities purely to raise funds will not qualify.

Charities that preserve, maintain, keep or create property such as buildings, grounds or other land, plants, animals, works of art (excluding performances), artefacts and property of a scientific nature might wish to consider how they might take advantage of the new rules. Heritage and conservation charities currently operating the Gift Aid system under the old rules must make sure that they are aware of the new rules to avoid falling foul of them.



GIFT AID: APPROPRIATE DECLARATIONS

In order for a gift to a charity by an individual to be a 'qualifying donation' for the purposes of the Gift Aid Scheme, the donor must give an 'appropriate declaration' in relation to it to the charity. The declaration may be given in writing or made orally and must state the donor's name and address, the name of the charity, the gift to which the declaration relates and confirm that it is to be a qualifying donation.

Previously, where a declaration was made orally, the charity was required to send the donor a written record of their declaration. However, from 1st November 2005 this will no longer be necessary. Charities will be able to either continue to send written statements for all declarations or keep auditable records. An auditable record is a record of evidence of appropriate declarations and the making of them, and that statements explaining the effect of section 25(8) of the Finance Act 1990 were given to the donors at the time the declarations were made, in a form, and to a standard, which can be inspected and audited by HM Revenue and Customs.

Clearly charities will be able to take advantage of this, as it is likely to save both time and costs. However charities should be aware that declarations might be deemed never to have effect if HM Revenue and Customs notify the charity that the records do not meet with their satisfaction.



DEAL WATCH

Rollits acts for a significant number of charities. The following are just a few of the matters on which our charities group has recently advised clients:

- Advising major visitor attraction "The Deep" in relation to various commercial matters;
- Advising Scarborough Museum Trust in relation to a sponsorship agreement, a professional fundraising agreement and grant applications to the Heritage Lottery Fund;
- Acting for York Archaeological Trust in relation to a Millennium Grant agreement and advising on contractor procurement and various other matters;
- Advising Scope with regard to various issues in relation to establishing a "Sure Start" early learning centre in Liverpool;
- Advising the National Railway Museum in relation to acquiring "The Flying Scotsman" the setting up of a Rail Academy and various commercial transactions;
- Advising Hull Truck Theatre regarding the proposed new theatre development and fundraising;
- Advising Childwatch on commercial participation arrangements;
- Advising the Disaster Emergency Committee on the 'Witness' exhibition of Tom Stoddard photographs;
- Advising the Hunter Rubber Company in respect of its celebrating fifty years of its company existence by producing a range of different coloured Hunter Wellington Boots to be sold to raise money for 8 different charities;
- Advising registered social landlords on EU Procurement regulations and the Freedom of Information Act;
- Advising various charities on data protection.

INFORMATION

If you would like any further information on any of the issues raised by these articles or charity law and Gift Aid in general please contact: Ralph Coyle or Gerry Morrison on 01904 625790

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

**The law is stated as at 25 November 2005
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