

Community Shares



Technical Guidance Note
Converting a charitable company into a Community Benefit Society
Case study: Hastings Pier Charity

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Introduction

The purpose of this technical note is to outline the legal issues involved in changing the status of the Hastings Pier Charity from a charitable company limited by guarantee, to that of a charitable community benefit society registered under the Industrial and Provident Societies legislation. The briefing deals with:

- the decision was taken to pursue the conversion;
- the legal position before the change;
- the process for achieving the conversion;
- what happened next.

Why change the structure?

Hastings Pier Charity (“the Charity”) was registered as a charitable company limited by guarantee in February 2011, to help take forward the renovation of the pier alongside the White Rock Trust, and as part of a long process of obtaining ownership and preparation. The company was registered with the Charity Commission on 21st April 2011. The restoration of the pier required significant capital investment. More information on the background generally is available at: <http://www.hpcharity.co.uk/>.

During the process of raising the funds, the Charity identified the possibility of inviting local people and other interested parties to invest in the process of renovation through a community share issue.

The Charity also identified that an additional incentive for investors would be the application of the Enterprise Investment Scheme (EIS), offering tax relief on eligible investments. EIS is administered by HMRC through the Small Company Enterprise Centre (SCEC) for each area.

The legal position before the change

As a charitable company limited by guarantee, the Charity was not able to issue shares (because guarantee companies have “members”, not shareholders). It is not possible to convert a guarantee company into a share company, and in any event companies limited by shares cannot, generally, be charities.

The preferred legal structures for community share issues are co-operatives and community benefit societies, because of the particular status that these societies enjoy in relation to the Financial Services and Markets Act 2000.

A community benefit society is also able to satisfy the criteria for the EIS, which are set out in part V of the Income Tax Act 2007.

The trustees of the Charity therefore considered converting the Charity into a community benefit society.

Changing from company to community benefit society

It is possible for a company to convert itself into a community benefit society, under section 53 of the Industrial and Provident Societies Act 1965 (due to become section 115 of the Co-operative and Community Benefit Societies Act when this becomes law during 2014). The 1965 Act contains a relatively straightforward procedure, under which a set of rules are drawn up to replace the company Articles of Association, and a special resolution passed by the members of the company.

The complicating factor is this situation was the charitable nature of Hasting Pier Charity; the change from charitable company to community benefit society had never been done before (as far as we know!).

As a registered charity, the Charity was subject to the rules set out in section 198 of the Charities Act 2011, which prevent a charitable company making any “regulated alteration” of its articles of association without the prior written consent of the Commission. Regulated alterations include:

- any change to the objects;
- any change concerning the application of property on dissolution; and
- any change to the rules on benefits for directors or members.

The Commission’s view here was that as all of those provisions would effectively be replaced by the relevant sections in the rules of the community benefit society, the adoption of those sections in the new rules required their prior written consent.

Moreover the Commission were particularly concerned to review the objects in the new rules and confirm their charitable nature. The Commission would not give their consent to a conversion of this nature if, in their view, the conversion would result in a community benefit society that was not charitable. By giving their consent to the conversion, the Commission were also giving their implicit approval to the charitable nature of the society.

Community benefit societies can be (but aren’t necessarily) charitable in nature, and are exempt from registration with the Commission¹ (though this may change under provisions from the Charities Act 2006, that have still not been brought into force). Societies usually use an application to HMRC for charitable status for tax purposes, as reassurance on their charitability generally, but HMRC will generally defer to the Commission on determining whether a legal entity is charitable in nature.

The question of charitability is also important in determining the protection of any assets that the converting body may have. Charitable assets, whether owned by a registered charitable company or by a charitable community benefit society, are protected by the mechanisms of charity law. Non charitable community benefit societies can “self impose” an asset lock under separate statutory provisions, soon to be incorporated into the new Co-operative and Community Benefit Societies Act 2014, but this is not automatic and depends on the detail of the rules of the particular society.

In relation to the share issue, as well as re-constituting the Charity as a community benefit society, the trustees considered applying to their local Small Company Enterprise Centre for “advance assurance” in relation to EIS. This process gives advance clearance for those seeking to take advantage of EIS, and provides reassurance that, as long as the organisation carries out the share issue in the way that it has described to HMRC, the tax relief will be available for qualifying investors.

As part of the process of preparing for conversion, therefore, the Charity and those working on its behalf:

- prepared draft rules and shared those rules with the Charity Commission, as part of the process of formally seeking the Commission’s consent to the changes, under section 198;
- applied to the relevant SCRC for advance assurance;
- applied to the charities team within HMRC for confirmation that, following conversion, the community benefit society would be accepted as charitable for tax purposes.

The Commission made a number of suggestions for changes to the rules, which were agreed by the Charity. HMRC both gave advance assurance in respect of EIS, and, following the Commission, confirmed that the Charity would be accepted as charitable for tax purposes following conversion.

¹ Many charitable benefit societies are, in practice, supervised by other bodies because of the particular work that they do, the two most common examples being housing associations (by the social housing regulator based in the Homes and Communities Agency) and educational bodies (largely by the Department for Education). However none of these categories apply to Hastings Pier Charity.

Significant assistance was provided to the Charity by advisors and supporters, including sector body Co-operatives UK and law firm Mischon De Reya. These are technical issues and this kind of support will often be needed.

And then?

Hastings Pier Charity became a community benefit society on 10th October 2013. The Charity has since launched its community share issue, which has been a remarkable success and has now raised over £500,000, with the issue having closed on 5th April 2014.

The process illustrates that charitable status need not be a bar to raising funds by means of a community share issue. With technical support and appropriate legal advice, the concerns that the regulators involved will rightly have can be addressed and dealt with.

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