

Client Reference Number: [Confidential]

12 March 2024

Privileged & Confidential

By email to: [Confidential]

Dear [Confidential]

Re: Your appointment with qLegal on 20 February 2024.

How we work

Thank you for attending your appointment with us and for using the services of qLegal at the Centre for Commercial Law Studies, Queen Mary University of London. Although we cannot provide you with representation in any proceedings and do not hold ourselves out to be a firm of solicitors, our advice is free and we aim to provide the same high standard of service expected in the practice of law. Please note that the legal advice provided is in relation to the laws of England and Wales only.

Summary of the facts

- You are seeking to establish a joint bakery and café [*staffed by and for the local community*] (the “**Business**”).
- The purpose of the Business is to benefit the community of [Confidential]. It seeks to help mainly [Confidential].
- The Company will primarily employ [Confidential].
- You want to set up the Business at a specific location in [Confidential] (the “**Venue**”). To secure the Venue, the Business must first be incorporated as a company.
- The goal is for the Business to be scalable in the future. Currently there are no plans for an exit strategy.
- You propose to fund the Business using grants, donations, funds, and loans. Funding through external investors is to be avoided as much as possible, as you would prefer all surplus amounts generated to be reinvested back into the Business or donated to various organisations and/or the community. You may be more open to investments where funding needed to be secured, for example, to purchase new necessary equipment.
- At the start, you will be the sole director of the Company. You have some individuals in mind for directorial positions in the future. You would like to appoint at most three directors. Ideally, you want

to receive a salary for your directorial duties. You want to retain as much control over the Business as possible, however, you understand this may change as the Business grows.

- You want no personal liability and want to protect yourself from any personal financial losses in connection to the Business.

Scope of our advice

- Our advice details recommendations on whether the Business should be set up as a Community Interest Company (the “**CIC**”) limited by shares or limited by guarantee.
- The advice further contains a template Memorandum of Association (the “**MoA**”) and Articles of Association (the “**Articles**”), and proposed answers to the CIC36 Form.
- Our advice also contains information on the advantages and disadvantages of appointing multiple directors in a CIC.
- Additionally, we have included advice on filing a Statement of Initial Significant Control (“**SISC**”).

Summary of advice

Having considered your commercial needs, intentions, and future goals, we recommend that you set up the Business as a CIC limited by guarantee. This structure is the most advantageous to the Business because, among other things:

1. you will not have to pay dividends to shareholders and therefore will be able to reinvest all profits back into the Business; and
2. you may be able to maintain more control by not having external investors.

If you wish to incorporate a CIC limited by guarantee, you may use the templates included in Annexes I-IV as a guide for the Business’ MoA, Articles, CIC 36, and SISC documents. We have also outlined the advantages and disadvantages of having multiple directors. For the purposes of incorporating the Company, you may act as the sole director. However, to access certain grants in the future, the Company may need more directors.

Explanation

What is the difference between CICs limited by shares and CICs limited by guarantee?

Table 1: Similarities between CICs limited by shares and CICs limited by guarantee

All CICs	
Asset-Lock	<p>All CICs are asset locked.</p> <p>This means that any assets of a CIC are exclusively used for community purposes. A CIC may transfer its assets out of the CIC, provided that such transfer is:</p> <ul style="list-style-type: none"> (a) at market value; (b) to another asset-locked body (e.g., another CIC or a charity) specified in the articles or with the permission of the Office of the Regulator of Community Interest Companies (the “Regulator”), or <p>otherwise for the benefit of the community.</p>
Funding	<p>All CICs can seek funding through various community interest funding opportunities, such as grants, donations, funds, or loans.</p>

Table 2: Differences between CICs limited by shares and CICs limited by guarantee

	CICs limited by shares	CICs limited by guarantee
Ownership	<p>CICs limited by shares are owned by shareholders. These can be either natural persons, companies, or institutions. Shareholders collectively have control over the company whose shares they own. Shareholders should be documented in the company’s register of shareholders, detailing who they are, together with their corresponding shareholding. Directors of a CIC limited by shares are permitted to also be shareholders.</p>	<p>CICs limited by guarantee have members who control the CIC, as opposed to shareholders. Members can either be natural persons or another corporate body (e.g. another company) and can also be directors of the CIC. CICs limited by guarantee must have at least one member and all members must be documented in the company’s register of members.</p>

<p>Decision-making</p>	<p>Decisions in a CIC limited by shares are made by directors and/or shareholders. While directors of the company may also be shareholders of the same company, director and shareholder powers cannot be exercised jointly. Directors exercise their powers at board meetings through voting. Shareholders may pass decisions through formal written resolutions or resolutions passed at general meetings. Shareholders may decide on the appointment or removal of directors, issuing additional shares, share transfers, or the approval of transactions in which any director has an interest.</p>	<p>Decisions in a CIC limited by guarantee are made by directors and/or members. Similarly to a CIC limited by shares, directors may also be members. Directors in a CIC limited by guarantee make decisions in the same way as in a CIC limited by shares. Members may vote in general meetings or pass written resolutions much in the same way as shareholders in a CIC limited by shares.</p>
<p>Distribution of profits</p>	<p>Shareholders may be paid dividends out of distributable profits.</p> <p>It is important to note that a CIC may be limited by shares under Schedule 2 of the Companies (Audit, Exemption and Community Enterprise) Act 2004 and is a “not for profit” company as it cannot distribute profits to shareholders that are not an asset-locked body, such as, a charity. However, a CIC limited by shares under Schedule 3 of the Companies (Audit, Exemption and Community Enterprise) Act 2004 can aim to make profit and that profit can, subject to certain checks and balances, be distributed to its shareholders (who may or may not form part of the requisite community) in the form of a dividend. Any dividends payable to non-asset locked bodies will be subject to a cap. The current cap is to the maximum aggregate of dividends payable is 35% of distributable profits. A similar cap applies to interest payments on loans where the rate of interest is linked to the CIC’s performance.</p>	<p>In contrast, a CIC limited by guarantee has no share capital and therefore cannot pay dividends to its members.</p>

<p>Fundraising</p>	<p>A CIC limited by shares may issue new shares to attract external investors and raise money.</p> <p>In addition, grants may also be available for CICs limited by shares subject to the requirements of the financier.</p>	<p>Although CICs limited by guarantee cannot raise any funds by allotting new shares, there is some suggestion that they may be able to reach more grants and other types of funding than CICs limited by shares. This may well be because there are some reputational concerns that CICs limited by shares may be for-profit, in contrast to those limited by guarantee. However, the Regulator’s guidance suggests that both CICs limited by guarantee and shares may access grants and such grants remain subject to the requirements of the financier in question.</p>
<p>Liability</p>	<p>Liability of shareholders is usually limited to the amount, if any, unpaid on the shares held by them.</p>	<p>Liability of members is usually limited to £1 as per the proposed Articles.</p>

Charitable Incorporated Organisations

In your initial enquiry to qLegal, you requested advice on whether to incorporate [Confidential] as a CIC limited by shares or a CIC limited by guarantee. However, during the interview, you mentioned that you had also considered incorporating the Business as a Charitable Incorporated Organisation (the “CIO”).

CIOs are charities, registered with the Charity Commission. CIOs must have at least one trustee and at least one member. A trustee of a CIO must be an individual, aged 16 and above, who is not disqualified for any of the reasons listed in the Charities Act 2011, including not having any prior convictions. Trustees ensure that the charity is carrying out its purposes for the public benefit. They set out the governing document, plan what the charity does and oversee its actions, and make sure that everything the charity does is to further its charitable purposes.

The trustees and members of a CIO have limited liability; in case of debt, they either contribute to a pre-set maximum amount, or they are not liable at all. The main advantage of CIOs are the less onerous reporting and accounting obligations. CIOs fall under the Charities Act 2011 which has a less onerous accounting regime than the Companies Act 2006, under which CICs fall.

During our interview, you mentioned that you would like to follow the structure adopted by [Confidential] (“RR”). RR is a chain of coffee shops which trains and employs ex-offenders upon release to facilitate their integration back into society and the job market. Essentially, it is doing for ex-offenders what [Confidential] wishes to do [Confidential]. While RR is now a CIO, when it first became incorporated, it was a CIC limited by shares. Indeed, if you later want to transition a CIC to a CIO, this is currently permitted and we recommend you seek further legal advice.

If you wish to find out more about CIOs, you will find more information in the [Charities Act 2011](#). You should seek specialist advice and/or research on CIOs in the event you would like to explore this route further.

Which model is the most suitable for your Company?

Based on the information you shared with us during the interview, when we consider CICs limited by shares or guarantee, incorporating [Confidential] as a CIC limited by guarantee may be more suitable to your wishes for the following reasons:

- **No shareholders:** During the interview, you raised concerns around the degree of control that may be exercised by external investors as shareholders. You also mentioned that you do not want to pay dividends to investors from any profits and surplus the company may make, as you want to have the freedom to reinvest profits back into the Business.
- **Control:** If you incorporate [Confidential] as a CIC limited by guarantee, there would be no shareholders and therefore you may have more freedom to control the allocation of profits back into the CIC.

Therefore, you may wish to register the Business as a CIC limited by guarantee. Please note that once you decide on a CIC structure, it is not possible to convert to the alternative. For example, it is not possible for a CIC limited by guarantee to convert to a CIC limited by shares and vice versa.

How to register your Company

You may set up your CIC [online](#) with Companies House for a fee of £27. As part of the online application, you will need to upload two PDF documents. These are the CIC36 Form and the Articles of the Company. A digital version of the MoA is created when providing information during the online process and therefore a paper version should not be uploaded. Once approved, you will receive a 'certificate of incorporation' via email. This confirms the Company legally exists and shows the Company number and date of formation.

Alternatively, you may also set up your CIC by post for a fee of £35. This method can take up to 15 working days. You will find the [step-by-step guide](#) on how to register by post on the Government's website.

What are the advantages and disadvantages of having more than one director of the CIC?

Table 3: Advantages and disadvantages of multiple directors in a CIC

	Advantages	Disadvantages
Access to grants	Many grantors, especially the other CICs and charities to which you may apply for grant applications, may not be able to donate to a CIC if it has only one director. This is because often their own articles will not allow them to give grants to companies with only one director, in order to avoid misappropriation of funds. In addition, some charities may wish to appoint a trustee to act as a director	You will have to relinquish a degree of control to the other directors and indeed to external directors coming from charities wishing to donate to your CIC.

	Advantages	Disadvantages
	to oversee the execution of a donation provided to a CIC.	
Workload and salary	Another benefit to having more than one director is that you'll be able to share the day-to-day workloads amongst each other.	If you, the founder, also act as a director and want to pay yourself a salary corresponding to your directorial duties, the option of receiving a salary will need to be offered to any other directors, too. The community interest test and the asset lock (see below) both apply to the remuneration of directors.
Reputation and administration	Appointing multiple directors is considered a good corporate governance practice.	Where there are multiple directors, the administrative burden is higher. More administrative tasks are created for example by organising meetings, documenting decisions and how they were reached, taking meeting minutes, etc. In addition, more directors may also mean higher confidentiality concerns which will need to be accounted for by putting proper safeguards and training in place.
Efficiency	Multiple directors bring in different viewpoints, experiences, and backgrounds into the decision-making process. This ensures higher diversity of opinions and less bias in decision making.	Conflicts of interest between multiple directors may slow down decision-making and overall progress or even lead to a decision-making deadlock in extreme cases. However, the proposed Articles incorporate a provision whereby in the event of a deadlock, the chair (as defined in the Articles) has the deciding vote.
Risk of departure	There is less of a risk of you, as a sole director, departing the company.	There is a potential of crucial directors departing the CIC. This may then lead to further administrative burden to replace such individuals.

While the Company Act 2006 requires that a CIC has *at least* one director, for a CIC, it may be inevitable that it will have to appoint multiple directors in the future. This can be either because you will want to gain access to grants which require that the CIC has multiple directors, or because a charity or another organisation may wish to appoint a director in your CIC as part of a grant agreement, for example.

Although there are advantages to remaining the sole director of your CIC, we recommend that you appoint additional directors. Nevertheless, for the purposes of setting up the Company, it is sufficient to list only yourself as the initial director as more directors may be appointed in the future.

Appointing Additional Directors

The Articles, attached to this letter as Annex II, detail the proposed internal method of appointing directors under article 23.

If you wish to appoint a natural person as an additional director after you register your Business as a Company, you must notify the Companies House and submit a filled out AP01 form within 14 days of the appointment of such director.

If you wish to appoint a corporate director, however, your Company must have at least one director who is a natural person. In this case, the details of the appointment should be submitted to the Companies House via the AP02 form.

Community Interest Test

In order to satisfy the community interest test (the “CIT”) in regards to a specific activity, such as the remuneration of directors as mentioned in Table 2, the CIC needs to show that a reasonable person would consider said activity as being for the benefit of the community. If the activity only benefits a specific employee, in this case a director, without having any positive impact on the community, it is unlikely to satisfy the CIT.

To satisfy the CIT, several requirements would likely have to be shown. Firstly, remuneration should be reported. Secondly, the remuneration should be shown to improve the director’s work in regard to the community in some way – for example that it allows them to work longer hours or more efficiently. Lastly, any such salary must be set to a reasonable amount. In the event the Company is audited, you will have to show that any remuneration satisfies these three steps. Any activities of the CIC will have to satisfy the CIT test in the eyes of the Regulator and auditors.

Proposed Memorandum of Association

The MoA is a legal statement signed by all initial guarantors agreeing to form or be part of the Company and forms part of the incorporating documents. We have prepared a template MoA tailored to your Business which you may use should you decide to register your Company as a CIC limited by guarantee. It is attached to this letter as Annex I. You may use it if you decide to register your Company by post. If you register online, a MoA will be automatically generated for you and there is no need to upload one. Please note that if you decide to proceed with a CIC limited by shares, you should seek additional advice as to how to prepare a MoA tailored for a CIC limited by shares.

In addition, there is no need for all those who wish to become members to subscribe to the MoA on incorporation; they can become members and be entered in the register of members after the Company has been formed. However, there should be at least one member. If you wish to add any more members to your Company at a later date, this process will be governed by the Articles of the Company.

Proposed Articles of Association

We have prepared template Articles which you may use should you decide to register your Company as a CIC limited by guarantee. It is attached to this letter as Annex II. Please note that should you decide to proceed with a CIC limited by shares, you should seek additional advice as to how to tailor the Articles for a CIC limited by shares.

Please review the Articles to ensure they sufficiently meet the Company's needs. The Articles have also been drafted with the following assumptions:

- The CIC will be limited by guarantee
- There will be a small number of memberships
- Directors are not automatically members
- The number of members do not exceed the number of directors
- The liability of each member is capped at £1
- There will be multiple directors but allows for instances where there is a sole director, which we understand will likely be the position upon incorporation.

Additionally, as we noted in Table 1, all of the assets in the Company will be locked in accordance with the law on CICs. This means that assets (including any profits or other surpluses generated by the Business) cannot be used for private gain in any way. As a result, any recipients of the Business' assets should be nominated within the Articles of the Company and the proposed Articles allow for this nomination. According to the CIC Regulations, an asset-locked body is a community interest company, a charity or a Permitted Industrial and Provident Society; or a body established outside the United Kingdom that is equivalent to any of those. In the event an asset-lock body is not specified in the Articles, an appropriate recipient will be chosen by the Regulator, in consultation with the Company's directors and members.

If you would like more information about the CIT, MoA, or Articles, you may find more information in the [Community Interest Company Regulations 2005](#). Additionally, if you would like to amend the Articles, please seek further legal advice and consult the [model Articles on the UK Government's website](#) so that you do not remove or amend any mandatory portion of the Articles required by law.

Parts A and B of the CIC36 Form

You have asked qLegal to provide you with tailored answers to parts A and B of the CIC 36 Form. In our interview, we asked you questions targeted to find out information about your Business relevant to the form, and we have crafted a proposal accordingly. Please see our proposed answers in Annex III. To the extent you would like to provide more detail / accuracy, please do update as you wish to reflect the Company's aims.

Statement of Initial Significant Control

While you have not raised this in your communication with qLegal or at our interview, in our research of CICs we have noticed that CIC founders with similar objectives to yours file an "SISC". According to Government Guidance, you must identify any persons with significant control ("**PSC**") within your Company and include

them in the SISC as part of your Company registration application. A PSC can be you or someone else associated with your Company who is going to have significant control over the Company. You must record the details of any PSC in the Company's PSC register, as well as in the SISC when you incorporate the Company. In a CIC limited by guarantee, a PSC is usually someone who has:

1. more than 25% of voting rights in the company, and
2. the right to appoint or remove directors.

Additionally, someone who has influence or control over the actions of directors or shareholders is also a PSC. As the founder and initial sole director of [Confidential], you should add yourself to the SISC. We have attached a template SISC document to this advice letter as Annex IV. Please amend as required. You should also refer to the [Government Guidance on PSC](#) on the Government's website. You may also find this [video by Companies House](#) useful.

Company Name

In our interview, we touched on the topic of the name of your Business. Your current plan is to incorporate the Company under the name [Confidential]. This would be the registered name of your Company. In our interview you also mentioned that you would like to keep the registered and the trading name of the Company separate in order to avoid any negative connotations associated with the nature of the Company and to attract a wider range of customers. You are therefore also considering the name [Confidential], which would be the Company's trading name. When you register a company, its name must be sufficiently different from other companies' names so that a reasonable person may not confuse the two. Currently, there is a private limited company in existence called [Confidential]. In this light, it may be that the name [Confidential] may not be accepted for the purpose of creating your CIC, as there is only a one-letter difference between the two. Similarly, a company called [Confidential] also already exists. In any event, you can check the availability of a name in the company name availability checker: <https://find-and-update.company-information.service.gov.uk/company-name-availability>.

Once you decide on a name for the Company, the name of the Company must end with "Community Interest Company" or "C.I.C.". Please ensure the name ending you choose is also accurately reflected in the annexes provided to you.

Next Steps

1. Make an application to register the Company on the Companies House website.
2. Submit the required documents to the Companies House as part of your application.
 - You may use the documents which we have drafted for you. Please do update these documents to the extent required to include the name of the Company and to reflect the accuracy of the Company's needs.
3. We would also suggest that you appoint more than one director given the advantages we have listed above, particularly around funding. However, you as the sole director will likely suffice for the purposes of incorporating the Business.

We hope that the advice provides you with a comprehensive understanding of the legal questions you asked us to address. Should you require any assistance in any future matters, please do not hesitate to contact qLegal.

We look forward to receiving your prompt feedback on the service received (as required under the terms of our engagement letter) via this short form:

<https://qlegal.eu.cliogrow.com/intake/96a0a71c35ef40cdda77d55a571f8a72>.

Your feedback is important to our educational development and the development of our free services for start-ups and entrepreneurs.

Yours sincerely,

[Confidential]
Student Adviser

[Confidential]
Student Adviser

On behalf of qLegal