



BILL NO. 153

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

An Act Respecting Community Interest Companies

CHAPTER 38
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 6, 2012**

The Honourable John M^{ac}Donell
Minister of Service Nova Scotia and Municipal Relations

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

This page is intentionally blank.

An Act Respecting Community Interest Companies

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Community Interest Companies Act*.

2 (1) In this Act,

(a) “affiliate” means an affiliate within the meaning of subsection 2(2) of the *Companies Act*;

(b) “community interest company” means a company that has been designated as a community interest company pursuant to Section 5, 6 or 7 of this Act;

(c) “community purpose” means a purpose beneficial to

(i) society at large, or

(ii) a segment of society that is broader than the group of persons who are related to the community interest company,

and includes, without limiting the generality of the foregoing, a purpose of providing health, social, environmental, cultural, educational or other services, but does not include a political purpose or a prescribed purpose;

(d) “company” means a company incorporated under the *Companies Act*;

(e) “company to be incorporated” means any one or more persons who have subscribed their names to a memorandum of association and have requested a certificate of incorporation from the Registrar of Joint Stock Companies under the *Companies Act*;

(f) “designation documents” means the prescribed statutory declarations and other documents that must be filed to have an application to be designated as a community interest company considered by the Registrar;

(g) “distributable assets” means, in relation to a community interest company that is to be dissolved, the assets of the community interest company that remain after payment or provision for payment is made of

(i) all of the community interest company’s liabilities and the costs, charges and expenses properly incurred in relation to the dissolution, and

(ii) any money that, pursuant to the regulations, must be paid to shareholders of the community interest company on dissolution before making a transfer referred to in clause 18(1)(b);

(h) “Minister” means the Minister of Service Nova Scotia and Municipal Relations;

(i) “prescribed” means prescribed by the regulations;

(j) “qualified entity” means

(i) a non-profit association within the meaning of Section 61A of the *Co-operative Associations Act*,

(ii) a society incorporated under the *Societies Act*,

(iii) a registered charity within the meaning of subsection 248(1) of the *Income Tax Act* (Canada), or

(iv) a prescribed entity;

(k) “Registrar” means the Registrar of Community Interest Companies appointed under Section 4;

(l) “special resolution” means a special resolution within the meaning of Section 87 of the *Companies Act*.;

(m) “Supreme Court” means the Supreme Court of Nova Scotia;

(n) “transfer” means to transfer by any method and includes pay, spend, distribute, dispose, assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things.

(2) For the purpose of this Act, a person is related to a community interest company if the person is

(a) a director, officer or shareholder;

(b) a person who beneficially owns shares;

(c) an affiliate; or

(d) a director or officer of another company that is an affiliate,

of the community interest company.

3 Where there is any conflict between this Act and the *Companies Act*, this Act prevails.

4 (1) A Registrar of Community Interest Companies shall be appointed in accordance with the *Civil Service Act*.

(2) The Registrar shall perform such functions and duties relating to community interest companies as are conferred by this Act and the regulations.

(3) The Registrar may delegate in writing some or all of the Registrar’s functions or duties to one or more persons for the period specified by the Registrar.

5 (1) A company to be incorporated may apply to be designated as a community interest company by filing with the Registrar of Joint Stock Companies

(a) the incorporation documents required under the *Companies Act*;

(b) the designation documents; and

(c) the prescribed fees.

(2) Upon receipt of the documents referred to in subsection (1), where the Registrar of Joint Stock Companies is satisfied that the incorporation documents satisfy the requirements to register a memorandum of association and issue a certification of incorporation under the *Companies Act*, the Registrar of Joint Stock Companies shall

(a) forward a copy of each of the documents referred to in subsection (1) to the Registrar; and

(b) pending the Registrar's determination under subsection (3), defer deciding whether to register the memorandum of association and issue a certificate of incorporation.

(3) The Registrar shall determine whether the company to be incorporated is eligible to be designated as a community interest company upon incorporation.

(4) A company to be incorporated is eligible to be designated as a community interest company if, upon incorporation as a company,

(a) the memorandum of association complies with Section 9;

(b) the name of the company complies with Section 10;

(c) the company has at least three directors; and

(d) the Registrar, having regard to the designation documents and any other considerations the Registrar determines to be relevant, considers that the company has a community purpose.

(5) Where the Registrar determines that a company to be incorporated is eligible to be designated as a community interest company upon incorporation, the Registrar shall

(a) notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) upon incorporation, record the designation documents and designate the company to be a community interest company.

(6) Upon the Registrar giving notice of a determination to the Registrar of Joint Stock Companies that a company to be incorporated is eligible to be designated as a community interest company, the Registrar of Joint Stock Companies may proceed to register the memorandum of association and issue a certificate of incorporation under subsection 26(1) of the *Companies Act*.

(7) Where the Registrar determines that a company to be incorporated is not eligible to be designated as a community interest company,

(a) the Registrar shall notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) the Registrar of Joint Stock Companies shall return the documents and fees filed under subsection (1) to the applicant.

6 (1) A company may apply to be designated as a community interest company by filing with the Registrar of Joint Stock Companies

(a) a resolution, made in accordance with subsection (2), to alter the company's memorandum of association to comply with Section 9 and to change the company's name to comply with Section 10;

(b) a certificate of an officer of the company attesting to the approval, by resolution in accordance with subsection (2), of the name change and the alteration of the memorandum of association;

(c) a copy of the company's memorandum of association as altered by the resolution;

(d) the designation documents; and

(e) the prescribed fees.

(2) A resolution referred to in clause (1)(a) must be passed by every member of the company, regardless of whether the shares held by a member carry the right to vote.

(3) Upon receipt of the documents referred to in subsection (1), where the Registrar of Joint Stock Companies is satisfied that the documents referred to in clauses (1)(a) to (c) meet the requirements of Sections 17 and 19 of the *Companies Act* and subsection (2), the Registrar of Joint Stock Companies shall

(a) forward a copy of each of the documents referred to in subsection (1) to the Registrar; and

(b) pending the Registrar's determination under subsection (4), defer deciding whether to register the change of name and altered memorandum of association and issue a certificate of change of name and a certificate of memorandum alteration.

(4) The Registrar shall determine whether the company is eligible to become a community interest company.

(5) A company is eligible to be designated as a community interest company if, upon the alteration of its memorandum of association and the change of its name,

(a) the memorandum of association complies with Section 9;

(b) the change of name complies with Section 10;

(c) the company has at least three directors; and

(d) the Registrar, having regard to the designation documents and any other considerations the Registrar determines to be relevant, considers that the company has a community purpose.

(6) Where the Registrar determines that a company is eligible to be designated as a community interest company, the Registrar shall

(a) notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) upon the alteration of the company's memorandum of association and the change of its name, record the designation documents and designate the company to be a community interest company.

(7) Upon the Registrar giving notice of a determination to the Registrar of Joint Stock Companies that a company is eligible to be designated as a community interest company, the Registrar of Joint Stock Companies may proceed to register the documents referred to in clauses (1)(a) to (c), issue a certificate of change of name under subsection 17(3) of the *Companies Act* and issue a certificate of memorandum alteration under subsection 19(7) of the *Companies Act*.

(8) The alteration of the memorandum of association and the change of name take effect upon the documents referred to in clauses (1)(a) to (c) being registered by the Registrar of Joint Stock Companies.

(9) Where the Registrar determines that a company is not eligible to be designated as a community interest company,

(a) the Registrar shall notify the Registrar of Joint Stock Companies of the Registrar's determination; and

(b) the Registrar of Joint Stock Companies shall return the documents and fees filed under subsection (1) to the applicant.

7 (1) Two or more companies that are proposing to amalgamate and continue as an amalgamated company may jointly apply to have the amalgamated company designated as a community interest company by filing with the Registrar of Joint Stock Companies

(a) the amalgamation documents required under the *Companies Act*, including the amalgamation agreement;

(b) in respect of each amalgamating company, a certificate of an officer of the company attesting to the approval, by resolution in accordance with subsection (2), of the amalgamation agreement;

(c) the designation documents; and

(d) the prescribed fees.

(2) The amalgamation agreement referred to in clause (1)(a) must be approved by a resolution passed by every member of each of the amalgamating companies, regardless of whether the shares held by a member carry the right to vote.

(3) Upon receipt of the documents referred to in subsection (1), where the Registrar of Joint Stock Companies is satisfied that the amalgamation documents satisfy the requirements to amalgamate two or more companies under Section 134 of the *Companies Act*, the Registrar of Joint Stock Companies shall

(a) forward a copy of each of the documents referred to in subsection (1) to the Registrar; and

(b) pending the Registrar's determination under subsection (4), defer deciding whether to register the amalgamation documents and issue a certificate of amalgamation.

(4) The Registrar shall determine whether the amalgamated company is eligible to be designated as a community interest company upon amalgamation.

(5) An amalgamated company is eligible to be designated as a community interest company if, upon amalgamation,

- (a) the memorandum of association of the amalgamated company complies with Section 9;
- (b) the name of the amalgamated company complies with Section 10;
- (c) the amalgamated company has at least three directors; and
- (d) the Registrar, having regard to the designation documents and any other considerations the Registrar determines to be relevant, considers that the amalgamated company has a community purpose.

(6) Where the Registrar decides that two or more amalgamating companies are eligible to be designated as a community interest company upon amalgamation, the Registrar shall

- (a) notify the Registrar of Joint Stock Companies of the Registrar's determination; and
- (b) upon amalgamation, record the designation documents and designate the amalgamated company to be a community interest company.

(7) Upon the Registrar giving notice of a determination to the Registrar of Joint Stock Companies that two or more companies are eligible to be designated as a community interest company upon amalgamation, the Registrar of Joint Stock Companies may proceed to register the amalgamation documents referred to in clauses (1)(a) and (b) and issue a certificate of amalgamation under subsection 134(10) of the *Companies Act*.

(8) The amalgamation of the two or more amalgamating companies takes effect upon the documents referred to in clauses (1)(a) and (b) being registered by the Registrar of Joint Stock Companies.

(9) Where the Registrar determines that two or more amalgamating companies are not eligible to be designated as a community interest company upon amalgamation,

- (a) the Registrar shall notify the Registrar of Joint Stock Companies of the Registrar's determination; and
- (b) the Registrar of Joint Stock Companies shall return the documents and fees filed under subsection (1) to the joint applicants.

(10) A community interest company may not amalgamate with any other company unless the resulting amalgamated company is a community interest company.

8 (1) Where, pursuant to clause 5(5)(a), 6(6)(a) or 7(6)(a), the Registrar notifies the Registrar of Joint Stock Companies that a company is eligible to be designated as a community interest company, the certificate of incorporation, certificate of memorandum alteration or certificate of amalgamation issued by the Registrar of Joint Stock Companies must state that the company is a community interest company.

(2) A statement in a certificate of incorporation, a certificate of memorandum alteration or a certificate of amalgamation that the company to which the certificate relates is disig-

nated as a community interest company is conclusive evidence that the company is a community interest company.

9 (1) The memorandum of association of a community interest company must include the following statement:

This company is a community interest company, and as such, has a community purpose. This company is restricted, in accordance with the *Community Interest Companies Act*, in its ability to pay dividends and to distribute its assets on dissolution or otherwise.

(2) The memorandum of association of a community interest company must state the community interest company's community purpose.

10 (1) A community interest company must have the expression "Community Interest Company" or "société d'intérêt communautaire" or the abbreviation "C.I.C.", "CIC", "S.I.C." or "SIC" as the last phrase in each form of the community interest company's name.

(2) For the purpose of this Act,

(a) the expression "Community Interest Company" and the abbreviations "C.I.C." and "CIC" are interchangeable; and

(b) the expression "société d'intérêt communautaire" and the abbreviations "S.I.C." and "SIC" are interchangeable.

(3) No person shall use the expression "Community Interest Company" or "société d'intérêt communautaire" in any form of the person's name, unless the person is

(a) a community interest company;

(b) a federal corporation entitled or required to use that expression; or

(c) a prescribed person.

(4) No person shall use the abbreviation "C.I.C.", "CIC", "S.I.C." or "SIC" in the Province, either alone or in combination with other words, letters or descriptions, to imply that the person is a community interest company, unless that person is

(a) a community interest company;

(b) a federal corporation entitled or required to use that abbreviation; or

(c) a prescribed person.

(5) Subclauses 10(a)(i) and 11(a)(i) of the *Companies Act* do not apply to a community interest company.

11 A community interest company must have no fewer than three directors.

12 A director or officer of a community interest company shall, when exercising the powers and performing the functions of a director or officer of the community interest company, act in accordance with the community purpose of the community interest company set out in its memorandum of association and its designation documents.

13 (1) A community interest company shall not transfer any of the community interest company's assets other than

- (a) for fair market value;
- (b) to a qualified entity;
- (c) in furtherance of the community interest company's community purpose;
- (d) by a transfer contemplated by this Act and in accordance with this Act and the *Companies Act*, including, without limiting the generality of the foregoing, by a declaration of dividends, distribution on dissolution, a redemption or purchase of shares or any other reduction of capital; or
- (e) by a prescribed transfer.

(2) A community interest company shall not transfer any of the community interest company's assets by way of financial assistance except in accordance with subsection (1).

(3) For greater certainty, nothing in this Section prevents a community interest company from transferring assets in the ordinary course of business if the value of the assets transferred is or could reasonably be expected to be equal to the fair market value of the goods or services acquired in return by the community interest company.

14 (1) A community interest company may not acquire any property, real or personal, in joint tenancy with any other person.

(2) Where a community interest company holds property in joint tenancy with any other person, the community interest company and the other person are deemed to hold the property as tenants in common.

15 (1) A community interest company shall not declare a dividend unless the declaration is

- (a) authorized by the regulations; and
- (b) made in accordance with the requirements of the *Companies Act*.

(2) A community interest company may, in the community interest company's memorandum of association or articles of association, further constrain the declaration of dividends.

16 A community interest company shall not pay, in relation to a debenture issued by the community interest company or any of the community interest company's other debts, a rate of interest that is related to the community interest company's profits unless

- (a) the regulations authorize payments of that type; and
- (b) the payment is in accordance with the regulations.

17 A community interest company shall not make a payment to redeem or purchase the community interest company's own shares, or to otherwise reduce the community interest company's capital attributable to shares, unless the payment is

- (a) authorized by the regulations; and
- (b) in accordance with the company's articles of association and the *Companies Act*.

18 (1) Before a community interest company is dissolved, the liquidator of the company shall

- (a) comply with the prescribed dissolution requirements, if any; and
- (b) subject to subsections (2) and (3), transfer to one or more qualified entities all or the prescribed percentage of the community interest company's distributable assets.

(2) Subject to subsection (3), where, upon the dissolution of a community interest company, the memorandum of association of the community interest company specifies one or more qualified entities for the purpose of this Section, the liquidator shall transfer all or the prescribed percentage of the community interest company's distributable assets to the qualified entities in accordance with the directions, if any, respecting the distribution set out in the memorandum of association.

(3) Where the shareholders of the community interest company have passed a special resolution specifying one or more qualified entities for the purpose of this Section, the liquidator shall, notwithstanding anything in the memorandum of association, transfer all or the prescribed percentage of the community interest company's distributable assets to the qualified entities in accordance with the directions respecting the distribution set out in the special resolution of the shareholders.

19 (1) Notwithstanding Section 18, before making a distribution under clause 18(1)(b), the liquidator of a community interest company shall confirm with the Registrar that a qualified entity that is to receive distributable assets from the community interest company is eligible to receive such assets.

(2) A qualified entity is eligible to receive distributable assets from a community interest company that is being dissolved if the Registrar determines, in accordance with the prescribed criteria, that the qualified entity has a community purpose similar to that of the community interest company.

20 Where a community interest company does not specify a qualifying entity to receive its distributable assets upon the dissolution of the community interest company, the Registrar shall designate, in accordance with the prescribed criteria, a qualified entity to receive the distributable assets.

21 (1) A community interest company shall produce annually, at or before the date in each year by which the annual general meeting is held, a community interest report, in the prescribed manner, that describes the following in relation to the community interest company's most recently completed financial year:

- (a) a fair and accurate description of the manner in which the community interest company's activities during that financial year benefited society or advanced the community purpose of the community interest company;

(b) the assets, including the amounts of money, that were transferred during that financial year in furtherance of the community interest company's community purpose;

(c) the purpose for which the transfers referred to in paragraph (b) were made;

(d) the amounts of any dividends that were declared during that financial year;

(e) the assets that were transferred during that financial year for redemptions or purchases of shares or other reductions of capital;

(f) where, during that financial year, the community interest company has transferred, in accordance with Section 13, any assets

(i) with a fair market value that exceeds the prescribed amount,

(ii) to a qualified entity,

(iii) by way of financial assistance, or

(iv) to a person related to the company,

the details of that transfer, including the identity of the transferee, the purpose of the transfer and the amount, or a fair estimate of the amount, transferred;

(g) any prescribed information.

(2) The annual community interest report must be placed before the shareholders of the community interest company at the annual general meeting.

(3) Before a community interest report is placed before the shareholders of a community interest company, the community interest report must, by resolution, be approved by the directors of the community interest company.

(4) A community interest company shall file a copy of the community interest report with the Registrar within the prescribed period.

22 (1) A community interest company shall file a copy of its financial statements in respect of a financial year with the Registrar at the same time as the community interest company files the community interest report in relation to that financial year pursuant to subsection 21(4).

(2) A community interest company may not, by order of the Nova Scotia Securities Commission or the Registrar of Joint Stock Companies, be exempted from the requirements of Sections 121 and 122 of the *Companies Act* that relate to the production, content and approval of financial statements.

23 A determination of the Registrar under subsection 5(3), 6(4), 7(4) or 19(2) and a designation of the Registrar under Section 20 is final and is not subject to appeal.

24 Section 4 of the *Companies Act* applies *mutatis mutandis* to

(a) a designation document recorded by the Registrar pursuant to this Act;

- (b) a community interest report filed with the Registrar pursuant to subsection 21(4);
- (c) an order issued pursuant to clause 26(b); and
- (d) a prescribed document.

25 (1) A community interest company shall, upon being requested to do so by the Registrar, provide the Registrar with such information as the Registrar specifies to satisfy the Registrar that the community interest company continues to be eligible to be designated as a community interest company.

(2) Information provided pursuant to subsection (1) must be in the form specified by the Registrar.

(3) A community interest company that receives a request pursuant to subsection (1) may also provide the Registrar with written submissions respecting its continued eligibility to be designated as a community interest company.

26 Where, upon reviewing any information provided to the Registrar pursuant to Section 25, the information contained in the annual report and such other information as the Registrar considers relevant, the Registrar is no longer satisfied that a community interest company is eligible to be designated as a community interest company, the Registrar shall

- (a) notify the community interest company and the Registrar of Joint Stock Companies; and
- (b) order that community interest company be dissolved within 60 days in accordance with this Act and the *Companies Act*.

27 (1) An order issued pursuant to Section 26 may be appealed to the Supreme Court within 30 days of being issued by the Registrar.

(2) Where an order is appealed pursuant to subsection (1), the order is stayed pending the disposition of the appeal by the Supreme Court.

(3) On an appeal pursuant to subsection (1), the Supreme Court may consider any information that was before the Registrar in making a decision under Section 26 and may

- (a) affirm the order;
- (b) set aside the order; or
- (c) order the matter to be reconsidered by the Registrar.

28 (1) The Minister may make regulations respecting the designation and operation of community interest companies including, without limiting the generality of the foregoing, regulations

- (a) prescribing purposes not included in the definition of “community purpose”;

- (b) prescribing statutory declarations and other documents as designation documents;
- (c) prescribing entities that are qualified entities;
- (d) prescribing the duties and functions of the Registrar;
- (e) prescribing persons who may use the expression “community interest company” or the abbreviation “C.I.C.” as the last phrase in any form of the person’s name;
- (f) respecting transfers contemplated pursuant to clause 13(1)(d);
- (g) prescribing transfers for the purpose of clause 13(1)(e);
- (h) respecting the dividends that may be declared by a community interest company, including regulations respecting the amount and frequency of dividends;
- (i) authorizing the payment by a community interest company, in relation to a debenture issued by the community interest company or any of the community interest company’s other debts, of a rate of interest that is related to the community interest company’s profits and respecting the payment of such interest, if authorized;
- (j) authorizing payments by a community interest company to redeem or purchase the community interest company’s own shares, or to otherwise reduce the community interest company’s capital attributable to shares, and respecting such payments, if authorized;
- (k) respecting the dissolution of a community interest company including, without limiting the generality of the foregoing, prescribing
 - (i) the percentage of the distributable assets of a community interest company that may be transferred to one or more qualified entities pursuant to Section 18,
 - (ii) the amounts that must be paid to shareholders of a community interest company upon dissolution before transferring any of the community interest company’s distributable assets, and
 - (iii) the duties that a liquidator of a community interest company must perform;
- (l) prescribing criteria for the purpose of determining whether a qualified entity is eligible to receive distributable assets from a community interest company that is being dissolved;
- (m) prescribing criteria for the purpose of designating a qualified entity to receive distributable assets from a community interest company that is being dissolved if the community interest company has not specified a qualified entity to receive such assets;
- (n) for the purpose of Section 21,
 - (i) respecting the manner in which a community interest report must disclose the information specified by subsection 21(1),
 - (ii) prescribing an amount for the purpose of subclause 21(1)(f)(i), and

(iii) prescribing the information that must be included in a community interest report;

(o) prescribing the period within which a community interest company is required to file a copy of the community interest report with the Registrar;

(p) prescribing documents for the purpose of clause 24(d);

(q) prescribing fees for any application made to or service provided by the Registrar or any other person under this Act;

(r) respecting any matter or thing the Minister considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

29 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
