

TRANSCRIPT: CREATING THE CIC

Stephen Lloyd^{*†}

It is a great honor to be here and thank you for listening to me. You are going to have to learn a new set of initials. Rather than L3C, this is CIC, which stands for Community Interest Company—not Community Interest Corporation—because we in the U.K. use company rather than corporation. I am going to cover how the CIC idea developed, then go into a bit more detail about what a CIC is. I will look at how many CICs have been established and what issues and problems are arising as a result of their establishment. We are finding out as we go along.

It all started with Roger Warren Evans, a Welshman, great thinker, and a man with a tremendous sense of social commitment. He is a lawyer, a barrister. He has been on the board of one of the major British PLCs,¹ Sainsbury's, which is a big chain of food outlets. He has been hugely active in his local community as a school governor and member of the local council.

Roger and I used to meet now and again in a typical London wine bar. The one we met in used to be under a very prestigious law firm called Allen & Overy. The firm inherited the building from the Bank of England. It was a wonderful building, built in the 1950s. Once upon a time, it was filled up with women writing checks for the payment of interest on British government debt, called "gilts." Of course, with automation, that building is no longer needed, and all those women lost their jobs. Allen & Overy took it over. As a sign of the times, the building is now being turned into a massive retail park. Anyway, Roger and I were sitting, drinking a bottle of claret, which is after all, the inspiration for many a good idea. As Schiller once said, "When the wine goes in, strange things come out."² In this case, the strange thing that came out was the idea of a Community Interest Company.

Roger and I were bemoaning what had happened in Britain: there were charities with very adequate asset locks to ensure their charitable purposes. There were also mutual organizations and building societies that had been set up in order to benefit local communities as thrift-savings organizations. However, most of these mutual organizations were privatized in the 1980s,

* Senior Partner and head of the Charity & Social Enterprise Department, Bates Wells & Braithwaite London, LLP.

† Please note that the speaker reviewed and edited this transcript. New language appears in brackets, and ellipses indicate omissions of language.

1. A public limited company (PLC) is a type of limited liability company in the U.K.

2. FRIEDRICH SCHILLER, *THE PICCOLOMINI* act 2, sc. 12 (1799) (S. T. Coleridge trans., 1800).

by the then Thatcher Government, and so a whole arena of mutuality was lost.

I had a slightly bruising experience, in which a client of mine had been set up as a company limited by guarantee, which is a bit like a nonprofit, non-stock corporation. Although the clients had been highly successful, they did not have much money. So, they set the company up in a fairly informal way. The company took Apple technology, when Apple technology was first available in the 1980s, and developed the first Arabic-language newspaper that was printed in a country without censorship. The company printed in London and had enormous traction. The newspaper company did very well until a group came into the cooperative and thought, “this is rather good.” That group then managed to get hold of the power structure and changed the rules to try to turn the newspaper into a for-profit organization for personal benefit, rather than for mutual benefit. Then, a series of legal battles ensued in which the newspaper was destroyed because, fundamentally, the legal architecture through which this organization had been established was not strong enough to stop that sort of intrusion.

Under British law, there are a number of organizations called industrial and provident societies that are cooperatives.³ Indeed, there was a co-op I noticed just around the corner from our hotel in Hanover, New Hampshire only yesterday. But an industrial and provident society can actually be converted into a company under certain legislation.⁴ There have been cases of organizations that have been set up for community benefit, but a group of intruders can get hold of it, call an annual general meeting at four in the morning, vote to turn the organization into a company, and walk off with the assets.

What Roger and I were bemoaning was that there was no safe place for a public purpose organization that was not a charity. Conversely, in the U.S., as I understood it, there were nonprofit corporations running turnpikes and harbors that were not charities but had legal recognition.⁵ At the same time, there has been a rise of social entrepreneurs. In Britain, there are two definitions of social entrepreneurship often used, and the one I like best is from Social Enterprise London: trading for social purpose—combining the need to be a successful business with a social aim.⁶

3. See, e.g., SUSTAINABLE CHANGE CO-OPERATIVE, <http://www.sustainable-change.co.uk/home.htm> (last visited Sept. 6, 2010).

4. Industrial and Provident Societies Act, 1965, c. 12, § 52 (U.K.).

5. See, e.g., *About Us*, THE PORT OF VIRGINIA, <http://www.portofvirginia.com/explore/about-us.aspx> (last visited Sept. 10, 2010).

6. SOCIAL ENTERPRISE LONDON, STARTING POINT GUIDE 1, available at <http://www.sel.org.uk/>

I have come across a lot of social entrepreneurs in my job as a lawyer, and a lot of them would come to me and say, “I want to set up a charity.” I would say, “Why?” They would reply, “Well you know I’m doing this thing that is good for society.” And I would say, “Okay,” and then explain the tax breaks to them. (They would smile because the tax breaks are fantastic under British law for operating as a charity.) Then I would say, “Well, you have got to understand one thing: You’ve got to give your baby away.” They would then inquire, “I’ve got to give my baby away? What do you mean?” And I would answer, “Well, in a charity you are accountable to a board of trustees. You will be the chief executive no doubt—you might even be one of the trustees if I can persuade the Charity Commission to allow that—but the majority of the people with authority, the people who can sack you, are the trustees.” The social entrepreneurs would cry out, “Well, I don’t want that! How can I make sure that I have complete control and run it as a charity?” “Unfortunately,” I would then explain, “that is not possible.”

So, then I would start talking to them about forming some other type of organization or social enterprise, and actually it was quite complicated to embed social purposes in a legal form because there was not an off-the-shelf, simple-to-use legal entity ready for social enterprise unless you used these old-fashioned industrial and provident societies—the law for which has not been updated since 1965.⁷ So I had the idea that we should take company law and use it in a special way. Just as with the L3C you are piggybacking on existing LLC legislation, the CIC piggybacks on existing company legislation.

I suggested this because company law is regarded by the British Government as one of the gold standards for ensuring that British society and the British economy functions well, particularly in the international context. So, roughly every eight years British company law is overhauled; I have been practicing law since the 1970s, and there have been five major reforms of company law in that time. There has not been a single reform in industrial and provident society law in that time, so it has become out of date, whereas company law has been burnished, polished, and maintained.

My idea was to take company law and inject into it a bit of DNA that made it special for a specific type of company. Originally, we decided to call this the Public Interest Company, the PIC, and we made sure that the PIC would be dedicated in perpetuity to its purposes so it couldn’t be privatized or “de-public interestized,” to use a terrible expression. Instead,

uploads/StartingPoint_1.pdf (last visited Sept. 10, 2010).

7. Compare Industrial and Provident Societies Act, 1965, c. 12, § 52 (U.K.), with Industrial and Provident Societies Act, 2010, c. 12, § 52 (U.K.).

there would be a cap of sorts on maximum investment return and maximum payments to directors and staff. In order to promote this idea, we ran a series of workshops. We did one in the House of Lords and one at the London School of Economics before getting lucky. By then, Roger had gotten a bit bored with this idea, so it was really me that got lucky in that the then Prime Minister, Tony Blair, set up his strategy unit.⁸ He wanted to investigate the way that the whole charity and social enterprise sector worked. I got even luckier when I was asked to send one of my own employees to work there; I had a mole sitting inside the strategy unit office. Hence, I decided to write a paper for them and got lucky again because I was on the board of an organization that funded me to write the paper that convinced the strategy unit that this was a good idea!

There was only one problem in that a minister of the British Government at the time was looking at reforming hospitals, and he wanted to set up something called Public Interest Corporations—sounds very American. So the P-I-C initials were stolen. In response, the government decided to call it the Community Interest Company, not the Public Interest Company. To make a long story short, I did not draft the statute but gave the government the idea. I gave the government the outline, and then government officials drafted it.

There was one hilarious day when the government drafting team decided it needed to come and see me. Actually, the people instructing the drafting team needed to see me. I think eight civil servants came to my office, all at taxpayers' expense, to sit there asking me rather inane questions—none of which they needed to ask me because it was all in my paper anyway. That is the way government sometimes wastes its money. Anyway, the drafting team drafted the bill, and the act came into force in July of 2005.⁹ So what's in it?

Well this is all about how you take basic company law and create a special type of company. First, the special company has to have the name CIC. Second, it has to meet something called the CIC test, and that is what I am going to explore now. What is the CIC test? Well, it is wider than charity. The test is met when a reasonable person considers that the activities being carried on are for the benefit of the community.¹⁰ So, it is down to that reasonable man test—which lawyers love and nobody else

8. SELECT COMMITTEE ON THE CONSTITUTION, THE CABINET OFFICE AND THE CENTRE OF GOVERNMENT, FOURTH REPORT, 2009–10, H.L. 30, ¶ 44 (U.K.) available at <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldconst/30/30.pdf>.

9. See The Community Interest Company Regulations, 2005, S.I. 1788 (U.K.) (enacted in 2005) [hereinafter CIC Regulations].

10. *Id.* art. 2, ¶ 3.

understands. There have not been many cases interpreting “the community benefit.”

However, there was one case, and the CIC Regulator asked my views on it. The case involved an organization that was dedicated to sadomasochism between consenting adults. They thought that the idea of having the sadomasochist society linked with the initials CIC (pronounced “kick”) gave an indication about what they were on about in a sort of physical and tangible way. So, I was asked to opine seriously on whether or not sadomasochism, in private, between consenting adults was a benefit to the community. Call me boring and old-fashioned, but I said “no,” and the CIC Regulator agreed. But there are interesting questions: Would running a chemical factory that was highly polluting but produced useful drugs be in the interest of the community? These questions have yet to be answered.

Community interest is an international concept, and a CIC doesn’t have to be just in the U.K. For example, I am looking at the moment at setting up a CIC for people in North Africa who don’t want to have a charity but want to be able to benefit their community. The workers are part of the community, but the company can’t be just for the benefit of the employees—that would simply be a workers’ co-op. And, because the regulators don’t want to get into the question of whether or not political activities are for the benefit of the community, you cannot be a political party and a CIC.¹¹ You are also excluded from CIC status as a charity.¹² The legislation is very clear; you are either one or the other.

I will now discuss formation of a CIC. First, you must register. There is a very good government registry in Britain called Companies House.¹³ It registers companies, and is one of the most efficient organizations I know. When I started as a lawyer, you paid £50 to start a company. Now, it is only £20.¹⁴ Not many things in my life, apart from computers, are cheaper now than they were 30 years ago. I wish it was true of housing. Next, you have to sign a Community Interest Statement, which shows how you are going to deliver your community purpose.¹⁵ That is about saying to the world in a transparent way, “This is the way in which we are going to take legal objectives and translate them into practical action.” The Regulator¹⁶ then

11. *Id.* art. 2, ¶ 6.

12. *See* Companies (Audit, Investigations and Community Enterprise) Act, 2004, c. 27, §§ 39–40A (U.K.) [hereinafter Companies Act].

13. COMPANIES HOUSE UK, <http://www.companieshouse.gov.uk> (last visited Sept. 16, 2010).

14. *Starting a New Company*, COMPANIES HOUSE UK, <http://www.companieshouse.gov.uk/infoAndGuide/companyRegistration.shtml> (last visited Sept. 3, 2010).

15. CIC Regulations, art. 4, ¶ 11(1)(a); *see also* Companies Act, c. 27, § 36 (outlining procedures for forming a company as a CIC).

16. *See infra* p. 40 for a description of the CIC Regulator.

checks the statement and issues your certificate of incorporation. If you are an existing company, you can convert into a CIC through a process called “transmogrification,” which is the process of transforming from one limited form into another.¹⁷ There is a fairly simple process you go through at Companies House, and there have been quite a few conversions.

One key thing about the CIC is ensuring that there is a balance between the interests of the community and the interests of investors, which closely tracks discussions about fiduciary duties in relation to the L3C. In the case of the CIC, it is pretty clear that there has been a significant inroad into the notion of shareholder value—that the directors’ primary duty is to the shareholders. In this case, it is quite clear that the directors have a shared duty to the community purpose, to their investors, and of course to their creditors. Directors always have a duty to the creditors, but normally they don’t have to worry about it until the company appears insolvent.

In the case of debentures and interest, there is nothing to stop a CIC, like any other company, from borrowing money from the bank at whatever extortionate rate the bank demands, and giving it security. Just because there is an asset lock, which I will come to in a minute, doesn’t mean that the bank can’t have security. Lots of people think that the asset lock stops the bank from taking security—but it doesn’t. However, there is a control on performance-related interest. In other words, if you take out a loan and say, “I am only going to pay you interest if I hit a certain level of profitability,” or “if turnover hits a certain amount,” or whatever the performance may be, it is categorized as performance-related interest. Performance-related interest is equity-like, and there is a cap on it. It was 4% above the Bank of England base rate, which is currently extraordinarily low, like the Fed rate. It is the lowest it has ever been since the Bank of England was established in 1694.¹⁸ It is now 0.5%, so if you invested in performance-related bonds in a CIC you would get 4.5%. Now, however, that has been changed so you can get 10% return on a performance-related bond issued by a CIC.¹⁹ People basically objected that this was a stupidly complicated system. I told them at the time they were drafting the legislation that it was, but they didn’t listen. Now they have, which is good.

When it comes to share companies, you can have two types of companies, both with dividend caps. Originally the cap was set by reference

17. See generally Companies Act, c. 27, § 37 (outlining procedures for forming a company as a CIC).

18. Svenja O’Donnel, *BOE Cuts Rate to Lowest Since Bank’s Creation in 1694 (Update3)*, BLOOMBERG, Jan. 8, 2009, www.bloomberg.com/apps/news?pid=newsarchive&sid=aZLXttq0_pQQ.

19. Office of the Regulator of Community Interest Companies, *Notices Under the Companies (Audit, Investigations and Community Enterprise) Act 2004*, THE LONDON GAZETTE, Jan. 5, 2010, at 60.

to the Bank of England base rate, at 5% above the base rate. The cap has changed. In effect from the sixth of April 2010, you can have 20% per annum on the amount invested in your shares, so if you put in a dollar, you get 20 cents on the dollar max. However, that is within an overall cap—the CIC can only distribute a minority of its profits, 35% in any one year.²⁰ If it doesn't use up all of its 35% it can roll the undistributed amount (up to the 35% cap) forward for up to five years.²¹ You might think 35% sounds small, but actually if you look at most banks, they don't distribute more than about 25% of their profits. In that context, 35% is quite big and that is after the banks have paid a tremendous amount of remuneration to their employees. But most companies need to retain a large chunk of earnings in order to have money for growth.

The key thing with shares in a CIC is that the capital growth inures to the social purpose; it does not go to the shareholders, so shareholders in a CIC are really a bit like bondholders. They don't get the capital growth; they get an income. That is manifested in various bits of the legislation. Fundamentally, the company can only buy the shares back at dollar for dollar. I argued with the government at the time—and they didn't listen, and they still haven't—that there should be inflation-adjusted return. Equally, if there is a surplus when winding up a company, all the shareholders get is a dollar-for-dollar, a pound-for-pound, return on their investment. Any surplus has to go to another CIC, charity, or for a community purpose. So, there is no protection of capital in the sense of inflation protection.

You can, however, sell CIC shares for a small and modest profit. Say you had a share in a CIC that was yielding 20% per annum. Now that's not a bad yield. Assume interest rates were extremely low, and people were thinking they were doing really well if they got 5%; somebody might well pay you two pounds for a CIC share that then effectively yielded them ten percent. So you might be able to sell CIC shares for a small premium on the open market, but because of the caps on absolute return, which prevent you from realizing any capital growth, you are only going to be able to sell them like a bond—depending on the ratio of the yield on that bond relative to the market at the time.

Normal rules that apply to companies also apply to CICs, so it is exactly the same legislation relating to liquidation, et cetera. I will come to the CIC Regulator in a minute. On the other hand, as I have already

20. CIC Regulations, art. 6, ¶ 22(1)(b).

21. *Id.* art. 6, ¶ 20(2).

mentioned, when winding up a CIC, a shareholder only gets par, not anything more than the face value. There is no allowance for inflation.

The asset lock is integral to CIC legislation. One part of it is the fact that the shareholders are capped in their return. The other is that there is an absolute obligation on the directors to make sure that they get the full market value on the sale of any assets. In other words, there can be no funny business by the directors depriving the community of its stake by flogging the assets off cheap to a company owned by the directors, which would be the obvious way you would get around the asset lock. You build it up, flog it off to a company you control, and make a profit. So the asset lock is designed especially to stop that sort of malfeasance at the expense of the community. You can see that if the directors were the only shareholders they could easily do that. There would be no shareholders to say foul and the community could lose its community stake.

There is someone called the CIC Regulator.²² Again, this corresponds closely with the L3C and the degree to which you can ensure that conflicts of interest are regulated. How do you work out the hierarchy of the directors' obligations? Well, within the CIC this is dealt with through the CIC Regulator. The CIC Regulator is appointed by the Secretary of State for Business and Innovation.²³ She sits in Companies House, and her job is to operate within rules of good regulatory practice (in other words nothing too invasive). She has to do what is necessary to maintain public confidence in the CIC brand and exercise her powers only if the company is in default, which is defined within the legislation.²⁴

The powers of the CIC Regulator are surprisingly wide. One of the paradoxes here is that the government has seen fit to appoint a regulator to potentially intervene in the affairs of what will often be small organizations, which it is not prepared to do with the likes of massive oil companies that might well commit worse corporate malfeasance than any of these small social enterprises. Nonetheless, the CIC Regulator can independently order an audit at the CIC's expense.²⁵ So, if the CIC Regulator is concerned that the accounts are not showing a fair view or there may be something dodgy going on, the CIC Regulator can send in forensic accountants to investigate. Additionally, the CIC Regulator has the power to start civil proceedings to intervene in the affairs of the organization, a bit like the Attorney General in

22. REGULATOR OF COMMUNITY INTEREST COMPANIES, <http://www.cicregulator.gov.uk> (last visited Sept. 16, 2010).

23. Companies Act, c. 5, § 27 (U.K.).

24. *Id.* § 41.

25. *Id.* § 43.

any state with respect to a charity.²⁶ The CIC Regulator can also remove the directors.²⁷ There is concern that CICs could be abused by paying the directors loads of money. You might not be able to get your money out by shares or capital growth, but why not just pay yourself a lot of money? Well, that could bring the CIC brand into dispute. The CIC Regulator is, therefore, also given the capacity to appoint and remove directors.²⁸ The CIC Regulator could do that if a director was paying himself excessive remuneration.

Further, the CIC Regulator can appoint a receiver to go in and run the company after the Regulator has sacked the directors.²⁹ The receiver can take control of property if she is worried that it is being misused or has lost its community purpose.³⁰ Additionally, the receiver can initiate the winding up of a CIC.³¹ So, as you can appreciate, these are wide-ranging powers designed to ensure that the CIC brand is maintained with integrity. There is marked contrast with the L3C, where, as I understand it, there is nobody with that kind of power to regulate. You can also appeal against the decisions of the CIC Regulator, first to an appeal officer, then obviously into the court system. So, there are checks and balances built into the regulation.³²

Every year you have to give a CIC report.³³ This means, as a CIC, not only do you have to file your normal end-of-year returns, your accounts, and an annual return with Companies House, you also have to return a CIC report, which sets out how you delivered your community benefit.³⁴ I think one of the interesting things that will evolve over time is the degree to which organizations are going to be able to start showing their social and environmental impacts. I hope this may start to drive us to a more sophisticated set of metrics, whereby we capture better social rates of return and financial rates of return.

Currently 4,280 CICs exist in a variety of sectors.³⁵ That is not bad—it is double the rate of formation that the government thought would happen when it legislated. And what about industrial and provident societies, which

26. *Id.* § 44.

27. *Id.* § 46.

28. *Id.* §§ 44–45.

29. *Id.* § 47.

30. *Id.* § 48.

31. *Id.* § 50.

32. *Id.* §§ 45(13), 46(10), 47(14), 48(13), 49(5)–(6).

33. *Id.* § 34.

34. REGULATOR OF COMMUNITY INTEREST COMPANIES, INFORMATION AND GUIDANCE NOTES, ch. 8, § 1.1 (Sept. 2006), available at <http://www.cicregulator.gov.uk/guidanceindex.shtml>.

35. REGULATOR OF COMMUNITY INTEREST COMPANIES, *List of Community Interest Companies*, <http://www.cicregulator.gov.uk/coSearch/companyList.shtml> (last visited Nov. 4, 2010).

I mentioned earlier? Co-ops have been around since 1844, and there are 4,800 of them.³⁶ Hence, they have been growing at a slower growth rate than CICs. Clearly, people find CICs useful, and they operate in a variety of areas. For example, there are quite a lot of CICs in agriculture, some in fishing, and some in manufacturing. Financial organizations are acting for a number of CICs in that field. One is called Investing for Good.³⁷ It was the first FSA (Financial Services Authority) registered CIC.³⁸ A lot of CICs are in education. Large numbers of CIC nurseries have been set up. Quite a lot of environmental projects as well—waste recycling in particular. So CICs span a broad range of categories.

I am working with an organization at the moment that is looking to provide power to communities by setting up small CICs in local communities, funded through a central fund, to deliver low carbon microgeneration energy schemes. We are working with a couple of organizations using CICs for community wind farms. A CIC won the contract to supply all transportation to workers constructing the venues for the London Olympics.³⁹ We are helping them prepare a bond issue at the moment.

CICs have not had universally good press. I am the first person to admit to that. I always say that I am not a CIC fanatic. The CIC is one tool in the box; it is another color on the palette; it is another thing that lawyers can use in appropriate circumstances. CICs are not the sole answer, but they have certain purposes.

Under English law, you can have two types of companies: one limited by shares and the other limited by guarantee.⁴⁰ In a company limited by guarantee, there are no shareholders. But, there are members who have all the powers of shareholders, except that they don't have a financial stake in

36. *About Co-operatives*, CO-OPERATIVES UK, <http://www.uk.coop/co-operatives> (last visited Sept. 8, 2010); *How Rochdale Pioneers Changed Commerce Forever*, BBC MANCHESTER, http://news.bbc.co.uk/local/manchester/hi/people_and_places/history/newsid_8838000/8838778.stm (last updated July 20, 2010) (explaining that the Rochester Pioneers established the initial principles for cooperatives in England in 1844).

37. *See generally* INVESTING FOR GOOD, <http://www.investingforgood.co.uk> (last visited Sept. 21, 2010) (“Investing for Good offers independent investment services for portfolios whose primary mission is positive social and environmental change.”).

38. PHILANTHROPY U.K., *A GUIDE TO GIVING* 55 (Susan Mackenzie ed., 3d ed. 2008), available at <http://www.philanthropyuk.org/AGuidetoGiving>.

39. Press Release, Award of Transport Contract Underlines Commitment to Local Employability and Sustainability (Apr. 9, 2008), <http://www.london2012.com/press/media-releases/2008/04/award-of-transport-contract-underlines-commitment-to-local-employability-and.php>.

40. COMPANIES HOUSE, *COMPANIES ACT 2006 GUIDANCE: INCORPORATION AND NAMES* 7 (Sept. 2010), available at <http://www.companieshouse.gov.uk/about/guidance.shtml>.

the business. Rather, they give a guarantee, hence the guarantee in the company's title.

If the company goes insolvent it will cough something up, but only one pound, so it is not an onerous guarantee. Furthermore, nobody ever collects it because it is more expensive to collect than forego a pound. This means that companies limited by guarantee can only be debt financed. They can't issue equity. Obviously, investors accept that.

In contrast, CICs limited by shares can issue equity. There has been a big argument among some people about whether the caps and controls on CICs limited by shares are too onerous, thereby stifling equity-type investment in CICs. When I conceived the idea of a CIC, I hadn't particularly thought about equity-type investors, let alone people wanting venture capital-type rates of return. Some of the criticisms—that CICs are limited by shares and have dividend caps—come from people who are expecting returns of 20% annual compound growth and similar results. The CIC is not the vehicle for that. I think the change to a 20% rate of return, which the government has introduced, and which comes into effect in April, may affect people's thinking about the attraction of CICs limited by shares. And whether or not the 35% dividend cap is too low, I honestly don't know, but I think it is probably reasonable given what most companies distribute.

The breakdown of the setup of those CICs limited by guarantee and those limited by shares is as follows: broadly speaking, for every one CIC limited by shares, three are set up limited by guarantee.⁴¹ That is not surprising because large numbers of CICs, and the people who set them up, don't see CICs as needing equity financing. Rather, CICs tend to be reliant on grants, debt, and in some cases, quasi-equity.

I have already mentioned that some people regard the controls and rewards on investments as too tight because there is no income protection. The other problem I have been addressing with the government—but so far I feel like I am banging my head against a brick wall because I have no mole in the treasury helping to make this happen—is to get some tax breaks for investment in CICs. If you support a charity under English law, just like in the States, you get pretty good tax breaks. Charities get pretty good tax breaks because their profits are tax-free if they fulfill their charitable purpose.⁴² They also don't pay property taxes or capital gains taxes. So, being a charity is a good deal in tax terms. On the other end of the

41. REGULATOR OF COMMUNITY INTEREST COMPANIES, SUMMARY OF THE RESPONSES TO THE CONSULTATION ON THE DIVIDEND AND INTEREST CAPS 1–2 (Oct. 2009), *available at* <http://www.cicregulator.gov.uk/consultation.shtml>.

42. *Charities and Tax*, HM REVENUE & CUSTOMS, <http://www.hmrc.gov.uk/charities/tax/basics.htm> (last visited Sept. 20, 2010).

spectrum, if you invest in high-growth, high-risk companies, you also get fantastic tax breaks under English law.⁴³ You get a tax write-off on the money that goes in and completely avoid capital gains tax when you sell the asset on the other end. In some cases, the dividends are tax free.⁴⁴ So you realize fantastic returns for high growth.

Social enterprises are unlikely to be high-growth—they are not going to be high-capital growth because that is the nature of a social enterprise. What social enterprises want, I would submit, is what people call “patient capital”—investments for a long term, bond rate of return. Twenty percent on that is pretty good, with no capital growth. So you are not going to sell these things and make a profit, absent my little example where you might sometimes make a small profit. I think tax breaks are needed to encourage people to invest in CICs.

Remember, a CIC is an illiquid investment, as it is an investment in a private company. You could float these things on the stock market, but so far nobody has. In London at the moment, there are a couple of guys who are trying to set up a social stock exchange designed to quote things like CICs, industrial and provident societies, and socially responsible businesses, but that hasn’t come yet. I think, to encourage the investment market, government needs to give people who invest in CICs a tax break when they put their money in and possibly a maximum 20% tax on yield they get, exempting them from a higher rate tax. Under British law, you pay 20% basic rate tax, 40% over £37,500, and then, as of April, the tax rate is going up to 50% on the balance if you earn over £150,000.⁴⁵

In conclusion, the CIC is a new “brand.” I think it is important to have a brand because it gives an identity to a sector. CIC is being seen as the brand for the formation of social enterprises; not the unique brand, not the only brand, but a significant brand.

The asset lock gives confidence to people that the CIC is established for social purpose and can’t be privatized. There is sufficient protective architecture around it to make sure that its social purpose is going to be honored now, and in the future, so that what happened with the building societies cannot occur. With building societies, selfless generations of people put money back into a pool for the overall benefit of the community, and then one generation cashed in on that, basically getting rich on the

43. Ben Yearsley, *How Can You Reduce the Treasury’s Take?*, THE INDEPENDENT, Mar. 13, 2010, at 66.

44. *Id.*

45. *Rates and Allowances – Income Tax*, HM REVENUE & CUSTOMS, <http://www.hmrc.gov.uk/rates/it.htm> (last visited Sept. 5, 2010).

forbearance of previous generations. The CIC legislation and architecture is designed to prevent such privatization.

The government has backed the CIC movement in the sense that there is a CIC Regulator. It has put the architecture in place to hopefully ensure that there is sufficient confidence in the structure to prepare people to use it. As I have already said, there is an increasing uptake of CICs, and I think that we will see that grow.

One of the reasons I think CICs will grow is that, in the current economic crisis, a huge number of people will be forced to create their own jobs. Big business isn't going to do it. My take on the recession is that more people are going to have to set up their own businesses. As the father of four boys with various friends, I am very impressed by the younger generation. They are very good at taking a holistic view about business, and at business not just as a means of making money or as charities, but as a blended, middle space—a potential new reality in which they will work. I think there is going to be increasing uptake among people who want to set up their own social enterprises and want a brand through which to do it. The CIC is definitely meeting a need, but it is only one more tool in the box.