

REPORT REFERENCE NO.	DSFRA/17/20
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY (ORDINARY MEETING)
DATE OF MEETING	12 JUNE 2017
SUBJECT OF REPORT	ESTABLISHMENT OF A COMMUNITY INTEREST COMPANY – PROGRESS REPORT
LEAD OFFICER	Director of Corporate Services
RECOMMENDATIONS	<i>That the report be noted.</i>
EXECUTIVE SUMMARY	An Extraordinary General Meeting of Red One Ltd. was held on 4 April 2017, attended by the Authority as sole shareholder in Red One Ltd. At that meeting it was agreed to establish a Community Interest Company limited by guarantee. This report sets out progress with this.
RESOURCE IMPLICATIONS	Nil.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing equalities and human rights legislation.
APPENDICES	A. Certificate of Incorporation for Red One Devon & Somerset Community Interest Company (CIC) (Note: this document also includes the Articles of Association and Community Interest Statement for the CIC).
LIST OF BACKGROUND PAPERS	Nil.

1. INTRODUCTION AND BACKGROUND

- 1.1 An Extraordinary General Meeting of Red One Ltd. was held on 4 April 2017, attended by the Authority as the sole shareholder of Red One Ltd. At that meeting, it was agreed to establish a Community Interest Company (CIC) limited by guarantee. A Community Interest Company is a type of company designed in particular for social enterprises that want to use their profits and assets for the public good. CICs are easy to set up, with all the flexibility and certainty of the company form, but with some special features to ensure they are working for the benefit of the community. This paper sets out progress to date in establishing the new company.

2. CURRENT POSITION

- 2.1 The new company – Red 1 Devon & Somerset Community Interest Company – has now been established. The Certificate of Incorporation is attached at Appendix A to this report. The Certificate of Incorporation also includes the Articles of Association for the new Company, together with Form CIC36 which details the Community Interest Statement (which sets out the intended activities of the company and the benefits to be provided to the community). It should be noted at the outset that, at present, the new company is a “shell” company only – it is not operating or trading actively.
- 2.2 The Authority has previously been advised that, unlike companies limited by share, companies limited by guarantee do not have “shareholders” but instead have “members”. Subject to any special provisions in the company's articles, the powers and responsibilities of “members” are broadly the same as those of shareholders in that they have ultimate control over the company and are entitled, for example, to attend and vote at general meetings, appoint and remove directors etc. Similarly, subject to any special provisions in the company's articles, company law provisions relating to general meetings, resolutions, etc. in ordinary share companies apply by and large to companies limited by guarantee.
- 2.3 The new company has been established with the following three initial “members”: Mark Healey; David Thomas and John Woodman (the three existing Non-Executive Directors of Red One Ltd.). Whilst Mark Healey and David Thomas are also Members of this Authority, their present appointment as “members” of the CIC is in a personal capacity.
- 2.4 The new company has been established in this way so that it is not deemed a “local authority controlled company”. For reference purposes, the definition of a “local authority controlled company” is set out at Section 68 of the Local Government and Housing Act 1989 and can be summarised as a company:
- (a) which is a subsidiary of a local authority or
 - (b) in which a local authority controls the majority of votes at a general meeting; or
 - (c) in which a local authority has the power to appoint/remove **a majority** of the board of directors; or
 - (d) which is under the control of another company which is itself a controlled company

- 2.5 Local authority ownership or control of a company comes with some commercial constraints because local authority companies are subject to restrictions on trading that other companies are not. For example, fire and rescue authorities may only undertake for a commercial purpose something relating either directly or indirectly to their functional purposes - and even then only in areas where there is not a statutory duty to undertake that function.
- 2.6 Appropriate safeguards and controls in respect of the new company are therefore not effected by virtue of its ownership, but by a range of methods including, but not exclusively:
- the asset lock which the new company has;
 - the Community Interest Statement;
 - the Articles of Association - it is proposed that the Articles of Association will be amended to provide for the Authority to appoint a given number of “members” of the company (or to become a “member” of the company in its own right) subject to the considerations in paragraph 2.4 above); and
 - perhaps most significantly, the contractual trading agreement that will be required for the provision of goods and services from the Authority to the new company.
- 2.7 These issues are currently being progressed and it is intended to submit a further progress report to the next full Authority meeting. In the meantime, the Authority is invited to note the current position.

MIKE PEARSON
Director of Corporate Services