

VICTOR KIRBY & CO. LIMITED
CHARTERED ACCOUNTANTS

Director: V.G. KIRBY F.C.A.

Our ref: VGK/DJ/Gen.Off.

F.A.O. Mei Ashelford,
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7th November 2013

Dear Mei Ashelford,

Re: **RMC's and Fred 50**

I currently act for over one hundred RMC's and, over my forty plus years of involvement with such companies, have dealt with literally hundreds more (perhaps over a thousand now?), since such companies tend to be referred to me, as they are set up, by a number of very active home-counties developers.

I have been concerned by the changing developments in the proposed accounting for such companies, but am pleased to see that much progress has been made in the preparation of Fred 50. However, there are a number of aspects which are confusing and/or unclear and in response to the question "Do you agree with the proposed draft FRC", I attach my observations. I would very much appreciate your responses so that I can better understand how we are intended to proceed.

I will email also tomorrow.

Yours sincerely,
VICTOR KIRBY & CO. LIMITED



Victor G. Kirby

OBSERVATIONS re FRED 50

1. Reference in Scope (page 5) is to profit or loss for a period. We always refer to income and expenditure – as RMC's are non-profit-making and operate on a mutuality basis. A profit would suggest a possible taxable element (e.g. if a surplus?).
2. (Page 5.5) - The cash balance and other assets are not co's assets and should not be recognised in the co's Balance Sheet.

(How does it balance then?).

3. (Page 5.6) - The income and expense shall not be offset. (What does this mean?). Similarly in 7 - where a receivable and payable arise from a single transaction and exist at the end of the period, these balances shall not be offset. (What does that mean?). This is taken from FRSSE 3.12 and 3.13.
4. The accounts must state that the RMC acts as a Trustee (FRSSE 3.14). Generally, trustees have a potential personal liability. How does a company fulfil this obligation? Will its directors be potentially personally liable and how will residents/owners be encouraged to accept these (unpaid) positions with such a burden on them? Entity B example, page 18, makes it clear that a statement regarding the fact that the company acts as a trustee will be required.
5. My copy of the FRSSE seems to exclude (incongruously?) parts of 37 b) and 37 c) i.e. the last line of 37 b) and first line of 37 c) including the left hand 37 c). Is the whole of 37 c) excluded and the last line of 37 b) or is this a printer shadow at my end?
6. The RMC's have historically always taken the income as being its income and a "trust situation" is, therefore, unnecessary, where the contributors are the same as the owners of the company and in control of its own funds, which is the whole purpose of forming a RMC? A trust situation is clearly needed where a managing agent holds the funds and the personal responsibility/potential liability then rests with them (as it should?). This should also be the case where there is a landlord collecting contributions and might otherwise mix the funds with his own or those of other properties, which I believe was the whole purpose of and need for Section 42 L. & T. A. 1987, when certain landlords were not always applying funds only to the costs of the contributing property owners, with the potential misappropriation problems that can cause. Quite frankly, the current status quo and accepted practise (for at least the last 40+ years, to my knowledge) whereby the RMC fully accounts for contributions received and outgoings (via its Income and Expenditure account and usual Balance Sheet entries) could be continued. I suspect this would be to everyone's relief (residents/owners, who understand the usual company statutory accounts and are used to them, particularly if they are in business, included) and would make the FRSSE quite straightforward i.e. "an RMC, in view of its constitution, can be deemed to be not acting as Trustee and can continue to account for income payable to it, as its asset (held for the benefit of its shareholders/members) and reported, as is established practise, in the Balance Sheet." See 7. following.

Cont/.....

7. The companies we act for have had their leases developed over many years and usually refer to the amounts receivable as "maintenance contributions" and the leases define how these are to be utilised. These are akin to service charges and the protections afforded by the L. & T. A. 1985 and C. & L. R. A. 2002 are, therefore, deemed to apply. However, they are not called service charges, as it has historically been considered that the company is to function like any other and its income and expenditure are to be fully recorded by it and not treated as trust income. Is there scope in the FRSSE to have a statement in the RMC's accounts, to the effect that "the company does not consider that it holds maintenance contributions received as being in trust and, accordingly, that the provisions of Section 42 L. & T. A. 1987 are deemed not to apply to it," rather than (or as an option with) the statements in 3.14 of the FRSSE? The key issues, Scope 15 (page 10), would suggest this might be a feasible option?
8. As regards item 20), on page 11, I would suggest that the statutory accounts (drawn up as historically) and with a detailed addendum "income and expenditure account" (we include a "Management Statement" setting out the costs, totalling to the total income) actually provides more useful and transparent information than "service charge accounts" produced under Sections 21 to 22 L. & T. A. 1985).
9. Is 22, page 11, suggesting that we may now be required to produce both statutory company accounts and service charge accounts, if requested under LTA 1985? Item 21 on page 11, refers to the preparation of service charge accounts, in accordance with the guidance in the ICAEW Technical Release 03/11 "Residential Service Charge Accounts". Was this not withdrawn? The last paragraph of Entity B example, page 18, seems to intimate this possible requirement also?
10. There appears to be no reference to the requirement to accumulate reserves for anticipated expenditure and how to account for this?

Our ref: VGK/CLK/Gen Off

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Aldwych House,
71-91 Aldwych,
London, WC2B 4NH.

11th November 2013

Dear Mei Ashelford,

Re: **RMC's and Fred 50**

Further to my e-mailed and posted letter and observations re the above, of 7th November, comments from another member, on point 6) of my observations, has led me to think I need to revise that particular observation. Accordingly I attach a revised point 6) and should be grateful if you will link this with my earlier observations, please. Thank you in anticipation.

Yours sincerely,
VICTOR KIRBY & CO. LIMITED

Victor G. Kirby

6. The RMC's have historically always taken the income as being its income and a "trust situation" should, therefore, be unnecessary, where the contributors are the same as the owners of the company and in control of its own funds, which is the whole purpose of forming an RMC? Indeed, there is no "landlord" other than the company itself so the tenants (owners) and company are effectively one and the same! An external trust situation presumably applies where a managing agent holds the funds outside of the company, since it is not "their" money and they should have a separate client's account for each property, as agents. However, even in such a case, it is common practise for the company to account for the income and expenditure in its accounts, in the usual way, as it should, since it is the principal, as has now been established. A trust situation presumably also applies where there is an external landlord collecting contributions and might otherwise mix the funds with his own or those of other properties, as some agents sometimes also did, which I believe was the whole purpose of and need for Section 42 L. & T. A. 1987.

Quite frankly, the current status quo and accepted practise (for at least the last 40+ years, to my knowledge) whereby the RMC fully accounts for contributions received and outgoings (via its Income and Expenditure account and usual Balance Sheet entries) whether held on its behalf by an agent or in its own bank account, should be continued. I suspect this would be to everyone's relief (residents/owners, who understand the usual company statutory accounts and are used to them, particularly if they are in business). It would make the FRSSE quite straightforward if there was an exemption e.g. "an RMC, in view of its constitution, can be deemed to be not acting as Trustee and can continue to account for income payable to it, as its asset (but held, of course, for the benefit of its shareholders/members) and reported, as is established practise, in the Balance Sheet." See 7. following. By allowing such an exemption, I believe the FRC could avert what I see as the otherwise next problem area we will see, which will be the question of whether the volunteer directors of RMC's may now be potentially personally liable under trust law, despite having become part of a limited company structure intended to protect them and the other owners personally. It is clearly important for us to remember that the whole purpose of Landlord and Tenant legislation is to protect the tenants primarily and I foresee more problems being potentially created with the current proposed approach. If volunteer directors are not forthcoming in future, the whole RMC ethos would become unworkable, of course.