

Club transfer process.

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Experience

As Scotland's first recognised sports law specialist team, our team has been ranked in the top tier in sports law in the UK since 1999. We advise in every aspect of sports law for the highest profile international federations and national governing bodies, tournament organisers, sports clubs, sports people and sports representatives. The issues we deal with include: regulatory and constitutional issues; event, tournament and competition staging; commercial contracts, including sponsorship, partnering and broadcasting; litigation and dispute resolution (in civil courts and sporting tribunals); discipline; anti-doping; licensing, insurance and child protection/safeguarding in sport.

The members of our team are specialists in a wide range of legal areas but all have specific knowledge of the sector. Our experience includes our role as the legal supplier to the sportscotland Expert Resource Consultancy to over 50 Sports Governing Bodies (SGBs) in Scotland.

Our team has unrivalled experience in relation to advising on high profile international sporting competitions based in Scotland, such as being appointed the sole legal advisors to the Glasgow 2014 Commonwealth Games and the Glasgow 2018 European Championships, as well as being the only firm in Scotland to handle matters for the Ryder Cup Europe.

On club conversions and charity legal structures, we advise clients on the incorporated legal structure options available for clubs and the advantages and disadvantages of each in respect of the club's proposed activities. We also advise and act on behalf of clubs in relation to incorporating charities, in particular Scottish Charitable Incorporated Organisations (SCIOs), including submitting applications on behalf of clients to the Office of the Scottish Charity Regulator (OSCR) and liaising with OSCR in respect of those applications, restructures and reorganisation schemes.

Some examples of our experience include:

- advising Celtic FC Foundation, the charitable subsidiary of Celtic FC, in relation to its conversion from a charitable trust to a SCIO;
- advising The Kiltwalk in relation to governance issues associated with its structure as a SCIO; and
- advising on the incorporation of SCIOs for Glasgow City FC, Highland Rugby Club and Scottish Athletics.

Club conversion to SCIO

We understand that many sports clubs are incorporating SCIOs in order to benefit from limited liability with incorporated status as SCIOs have separate legal personalities from their members. When an unincorporated club incorporates a SCIO, there will need to be a legal transfer of the club's assets to the new SCIO. Thereafter, the club will need to dissolve, otherwise it will continue to exist in its unincorporated form.

The complexity of the transfer will depend on what assets the club has. Even where a club does not own any land or property, this does not mean that no legal transfer is required. There will still need to be a transfer of the club's members, contracts, equipment, employees, bank accounts, cash, etc. If no such transfer takes place, the unincorporated club will retain ownership of these assets and the SCIO will have no rights to deal with the assets itself. This could potentially cause problems for the new SCIO if the club has referred to the SCIO's use / ownership of such assets in its application to OSCR to set up the SCIO.

Transfer of ownership of assets (non-heritable property)

The proposed transfer of assets from a club to the newly incorporated SCIO would usually be achieved by way of a transfer agreement between the club and the SCIO. We have a template short-form transfer agreement that we regularly use for charity transfers, particularly "intra group" transfers where the transfer is from an unincorporated club to a newly incorporated SCIO.

The transfer agreement will detail all assets of the club and ensure that all of the club's assets will legally transfer to the newly incorporated SCIO on the transfer date set out in the agreement. This also means that there is a legal document evidencing the transfer, which may be important in respect of any historic or future claims.

Transfer of ownership of assets (heritable property)

If the club owns any land or property, it would need to transfer ownership to the SCIO by way of a disposition signed on behalf of the club, which is then registered in the Land Register of Scotland. Who needs to sign the disposition will depend on what the title deeds say about who owns the land or property, as well as what the club's governing documents say about who can sign such deeds.

To register the disposition in the Land Register of Scotland, the value of the land or property will be required for the application form to Registers of Scotland. The value does not need to be exact and an up-to-date formal valuation report is not necessary, but the value should ideally be based on the recent opinion of a qualified valuer / surveyor. The value of the land will impact upon the amount of registration dues payable to Registers of Scotland for the disposition, and could also potentially impact upon any future compensation payable by Registers of Scotland in the event of an error with the title that is their fault.

If the property is secured to a lender or grant funder by way of a standard security then this would not necessarily prevent the club from granting a disposition of the property to the SCIO, but it could put the club in breach of its loan facility or grant funding conditions. We would recommend that the club has early discussions with its lender or grant funder in this case to understand their requirements.

Transfer of leases

If the club is the tenant under a lease, it would need to transfer its interest in the lease to the SCIO by way of an assignation of the lease.

Most leases provide that a tenant cannot transfer or 'assign' their interest in the lease to anyone else without first obtaining the landlord's written consent. If the landlord's consent is required and the landlord confirms that it is prepared to grant this consent, the landlord would be expected to either confirm their consent in the assignation deed or in a separate consent letter. Some landlords may try to place conditions on their consent to the assignation – whether they can do this or not will depend on the terms of the lease.

If the lease is for more than 20 years and is registered in the General Register of Sasines or the Land Register of Scotland then the assignation will also need to be registered in the Land Register of Scotland. Please note that where the lease is for more than 175 years and has an annual rent of £100 or less then the club's interest in the lease may have converted to ownership by statute. In which case, the transfer would take place by way of a disposition and not an assignation (see above).

Completion

Following the transfer of assets, the club would be able to complete its dissolution. This usually comprises of a final meeting of the club's members resolving to dissolve the club.

Where a disposition or assignation of a lease has been submitted to Registers of Scotland for registration in the Land Register of Scotland, we would recommend that the final meeting to dissolve the club does not take place until Registers of Scotland issues its confirmation of acceptance of the deed(s). The reason for this is that, if Registers of Scotland was to reject the application to register the deed(s), it is important that the club still exists in order to re-sign any deeds as may be required. Please note the process of registration following the confirmation of acceptance can take several weeks, months or in some cases years for Registers of Scotland to complete.

Get in touch

Sports clubs can access the sportscotland legal expert resource helpline by email at sportscotlandinfo@harpermacleod.co.uk or by calling 0141 227 9333.

About us

Harper Macleod is a leading Scottish independent law firm that is driven to deliver.

Our growth and success is determined by your success, which is why we always try harder. We don't just see ourselves as lawyers, we see ourselves as problem solvers and business advisers, who focus on understanding your needs. We work side by side with you, using law as a tool to provide innovative solutions that are tailored to organisations and individuals.

It's this drive that sets us apart and delivers a better outcome for you or your organisation.



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