

Legal Structures

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Overview

- SGB and club structures:
 - Unincorporated association
 - Company
 - Scottish Charitable Incorporated Organisation (SCIO)
 - Community Amateur Sports Club (CASC)
- Registration requirements
- Statutory duties
- Governance
- Questions

Unincorporated association

- Most basic structure and has no registration requirements other than that of its charitable status (if applicable)
- No “legal personality” – in other words, no legal existence separate from members
- **Advantages:** unincorporated associations are simple to set up and have no other statutory requirements unless a charity
- **Disadvantages:** does not provide limited liability for members (or charity trustees) and entry into leases and contracts must be done in the individual names of the members or charity trustees – could be personally liable

Company

- Private limited company by guarantee (members) – no shareholders and does not distribute profit. Its members' liabilities are limited to a guaranteed sum and must comply with the Companies Act 2006
- **Advantages:** separate legal personality and a company structure is also familiar to funding bodies and public agencies
- **Disadvantages:** formal registration requirements and associated costs. Charitable companies are subject to regulation by both the Registrar of Companies and Office of the Scottish Charity Regulator (OSCR)
- Community interest company (CIC) trades with social purposes or carries on other activities to benefit a community – regulated by the Registrar of Companies and the CIC Regulator

SCIO

- Corporate body only available to charities incorporated within Scotland
- **Advantages:** designed to be flexible with either 'one-tier' or 'two-tier' structure and separate legal personality so members enjoy limited liability. SCIOs are solely regulated by OSCR and not by the Registrar of Companies
- **Disadvantages:** Only bodies with charitable status can be a SCIO. If a SCIO loses its charitable status then it would cease to exist

CASC

- Sports clubs registered with HMRC with main purpose to provide facilities and encourage participation available to unincorporated associations and companies
- **Advantages:** can benefit from a range of tax reliefs, including Gift Aid
- **Disadvantages:** must meet HMRC requirements and income limits apply. Once registered as a CASC, cannot apply to be recognised as a charity

Registration requirements

- Unincorporated association – no registration requirements, unless seeking charitable status
- Company – incorporation at Companies House, and OSCR if seeking charitable status
- CIC – incorporation at Companies House, approval of the CIC Regulator
- SCIO – registration with OSCR
- CASC – registration with HMRC

Statutory duties – company directors

- Duty to act within powers
- Duty to promote the success of the company
- Duty to exercise independent judgement
- Duty to exercise reasonable care, skill and diligence
- Duty to avoid conflicts of interest
- Duty not to accept benefits from third parties
- Duty to declare interest in proposed transaction or arrangement with the company
- Duty to declare interest in existing transaction or arrangement with the company

Statutory duties – charity trustees

- Act in the interests of the charity
- Seek in good faith to ensure that the charity acts in a manner which is consistent with its purposes
- Act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another
- Ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of the Charities and Trustee Investment (Scotland) Act 2005
- Take such steps as are reasonably practicable for the purposes of ensuring that: any breach of duty is corrected by a charity trustee and not repeated; and any charity trustee in serious/persistent of duties is removed as a charity trustee

Governance

- Governing body members' responsibilities are to ensure:
 - the proper management and control of the SGB / club
 - that proper and effective financial controls are in place, to protect the SGB / club's money and property
 - that the governing body remains fit for purpose and has the right mix of skills and experience
 - that all governing body members are working together in the SGB / club's best interests

Governance

- Each governing body member should acquire:
 - an understanding of the SGB / club's objectives and respective current significant issues and risks
 - an understanding of the SGB / club's structure, including governance arrangements and key relationships, including, e.g. OSCR
 - an understanding of the SGB / club's culture
 - an understanding of all material relevant legislation, regulatory requirements, policies and procedures
- Formal induction process
 - "Induction pack": constitution, key policies, etc.
 - Code of conduct

Governance

Common governance issues:

- Delegation
 - Governing body members are responsible for the SGB / club and cannot pass this responsibility, or their duties, onto anyone else during their term of office
 - However, responsibilities may be delegated, subject to terms / conditions / limitations – e.g. to sub-committees or senior management
- “Shadow directors or trustees”
- Any person who, though not formally elected / appointed as a governing body member, exercises control over an organisation, may still be liable
- Shadow trustees – a person with influence / control over SGB / club management
- Analogous concepts of “shadow directors” and “de facto directors” under company law

Governance

- Relationship between governing body and executive / staff / volunteers
 - Governing body members need to work effectively with executive / staff / volunteers
 - Scrutinise and hold executive / staff to account – challenge where appropriate
 - Ensure clear lines of communication, limits of authority and reporting procedures
 - But understand distinction between “governance” and “management” and between strategic and operational issues
 - Don’t micro-manage
 - Remember that ultimate responsibility rests with the governing body members

Questions

Get in touch



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