

# Guidance for clubs on legal status

## What does "legal status" mean?

The term "legal status" is used to describe an organisation that has a legal personality separate from the individuals involved in the organisation, either as members or committee members. Most clubs will be set up as **an unincorporated association**, which means that in most cases: (i) the club is not a body corporate (for example, a company incorporated under law); and (ii) the club exists for a purpose other than making a profit for its members.

The law in Scotland does not recognise the existence of unincorporated associations as separate legal entities, which can cause problems when your club seeks to enter into contracts, own property, employ individuals as employees, etc.

This guidance note sets out a brief overview of some of the types of legal structures that are available for clubs.

## What type of body corporate is right for your club?

The main benefit for clubs having their own separate legal identity from their members is that they can hold property, enter into contracts and employ people in their own names. That can avoid potential difficulties caused when a member leaves the association, dies or loses capacity. The club's affairs can continue smoothly with unnecessary legal complications.

Broadly speaking, we would recommend the following legal structures for clubs:

- a company incorporated under the Companies Act 2006, being:
  - a company limited by guarantee ("CLG"); or
  - a community interest company ("CIC"); or
- a Scottish Charitable Incorporated Organisation ("SCIO").

## COMPANY LIMITED BY GUARANTEE ("CLG")

A CLG is a company incorporated at Companies House, which is made up of members and directors. There are no shareholders in a CLG and it does not distribute profit to its members. A CLG structure is flexible in some respects as it can apply for charitable status and can also apply for conversion into a CIC or a SCIO after incorporation.

The advantages of a CLG are:

- members enjoy limited liability in the event that the CLG wound up, as the members' liability is restricted to the sum which they have guaranteed to pay in that event (normally £1.00); and
- the CLG structure is generally familiar to funders and other third parties that the CLG might seek to engage or instruct.

Other considerations associated with a CLG are:

- members do not receive a return in the form of dividends;
- CLGs have various ongoing notification requirements, including making annual returns and notifying changes in directors, the secretary or registered office to Companies House (and the Office of the Scottish Charity Regulator ("OSCR") if registered as a charity); and
- there are various statutory requirements which have to be followed in relation to members' meetings and principles of company law, which could, in certain circumstances, have an impact on the company (for example, where a member wishes to challenge a particular procedure).

Another company structure used by commercial entities is a company limited by shares ("CLS"). However, this structure is not commonly used by sports clubs and we would not normally recommend that sports clubs seek incorporation as a CLS.

## COMMUNITY INTEREST COMPANY ("CIC")

A CIC, constituted as a CLG or a CLS, is an organisation which trades with a social purpose or carries on other activities which benefit the community. While a CIC has social or community elements, it is not appropriate for those organisations with charitable purposes, as it involves income generation through trading.

## LEGAL STATUS

In order to incorporate a CIC, the CIC Regulator must confirm that a proposed CIC meets the eligibility criteria as set out in the CIC Regulations 2005, including satisfying the CIC Regulator that the “community interest test” is met.

The advantages of a CIC are:

- it can be useful where an individual or small group of persons wish to pursue a trading operation for the benefit of the community but want to retain control and make an income from the venture; and
- members of a CLG or shareholders of a CLS enjoy limited liability. This means that in the event that the CIC goes into liquidation, the liability of the members of a CLG is restricted to the amount they have guaranteed to pay in the event that the company is wound up (normally £1.00) or the liability of the shareholders of a CLS is restricted to the amount that is unpaid on their shares (in practice most shareholders pay the full subscription fee at the point they become shareholders).

Other considerations associated with a CIC include:

- CICs cannot acquire charitable status, which deprives them of access to funding that would otherwise be available to charities;
- “asset lock” provisions restrict CICs’ asset transfers (including profits or other surpluses) for less than market value unless it is transferring them to: another CIC; a charity specified in its articles of association; an organisation to which the CIC Regulator has consented; or if the transfer is for the benefit of the community which the CIC was set up to serve;
- there are ongoing notification requirements to Companies House, including: completing annual returns; notifying changes in directors, the secretary or registered office; and completing the annual CIC report; and
- CICs are subject to regulation by both the Registrar of Companies and the CIC Regulator.

A CIC must satisfy the statutory community interest test for as long as it remains a CIC. Satisfaction of the community interest test is measured through the delivery by the CIC to the Registrar of Companies of its annual CIC report at the same time that its annual accounts are submitted. The annual CIC report records the CIC’s activities during the year in question and how it continued to benefit the community.

## SCOTTISH CHARITABLE INCORPORATED ORGANISATION (“SCIO”)

A SCIO is a corporate body which has a separate legal personality. This structure is only available to charities incorporated within Scotland. It is neither a company nor a trust and is solely regulated by OSCR.

A SCIO structure is only available for charities and as such, it must meet OSCR’s requirements for charitable registration. In order for an organisation to receive charitable status and successfully register with the OSCR, it must meet the requirements of the charity test laid out in the Charities and Trustee Investment (Scotland) Act 2005. To pass the test the proposed charity must only have charitable purposes and its activities must provide public benefit in Scotland or elsewhere.

The advantages of a SCIO are:

- members of a SCIO enjoy limited liability in the same way as companies;
- SCIOs are solely regulated by OSCR and not by the Registrar of Companies; and
- SCIOs are designed to be flexible and to be able to accommodate structures which are either: (i) ‘one tier’ or trust-like in form; or ‘two-tier’.

Other considerations associated with a SCIO include:

- only bodies with charitable status can be SCIOs. If a SCIO loses its charitable status then it would cease to exist;
- SCIO members have some of the statutory legal duties as charity trustee; and
- SCIOs must have their principal office in Scotland.

## Choosing the right structure for your club

The right structure will depend on the nature of your club, particularly in relation to the proposed aims and activities. This flyer provides a brief overview of the most appropriate types of legal structure for clubs but is by no means exhaustive.

If you are considering incorporating your club or you are looking for advice in relation to the constitution and structure of your current organisation, please get in touch. We can advise and assist you in deciding what the best legal structure is for you.

Date of publication: 23/02/18