

# LEGAL STATUS GUIDANCE



# The Purpose of this Toolkit

This toolkit is aimed for basketball clubs in Scotland who require to distinguish an appropriate legal structure for their club. There are various benefits if the right legal structure is applied however, selecting and applying a legal status can be a daunting task. The options available are:

- Unincorporated Organisation
- Limited Company
- Scottish Charitable Incorporated Organisation (SCIO) – See our SCIO Legal Status Guidance if Selected
- Community Amateur Sports Club (CASC)

# Unincorporated Organisation

- This organisation structure is appropriate for a voluntary group or a sports club. The organisation is made for a reason other than to make a profit.
- Due to the nature of sports clubs, this has become the most common structure amongst sports club. The members of the group come together to create the club constitution.
- This structure is suitable to those with limited liability. E.g. those without sufficient buildings, equipment, staff or financial assets.

# The Advantages and Disadvantages

## Advantages:

- The simplest form which is easy to adopt and administer
- This form is not a legal entity and therefore is classed as an association
- The club do not need permission from anyone to set up or run
- The club constitution created will allow for a bank account to be opened

## Disadvantages:

- No legal identity meaning liability is on the committee and club members so should something go wrong, they would be liable. As liability is unlimited, those with more wealth could be hit harder than those with less

# Limited Company

- There a limited company, the liability of the members are limited which is dependant on the investment they have made to the sports club.
- Should you become a limited company, legal advice should be sought and this can be a lengthy process.
- The legal identity allows for the sports club to establish a legal entity separate from the individual members. There are two forms of limited company:
  - Companies with an issued share capital, where ownership and control lies with the shareholders. This form is generally inappropriate for sport clubs
  - Companies limited by guarantee, where the members of the company each guarantee to pay a nominal sum (usually up to £5 each) in the event of the company being unable to meet its obligations. This form is usually used for sport clubs wishing to incorporate as a company
- Consider if: The club own high value assets, engaged in selling goods or services to non-members or they have a plan to run an event where there is a potential for significant financial loss.

# Advantages and Disadvantages

## Advantages:

- Contractual agreements, such as borrowing money or leasing buildings can be done
- The company rather than the members are responsible for debt and obligations (so long as no one acted negligently or fraudulently)

## Disadvantages:

- Onerous administration which will have penalties if not compliant
- Annual accounts presented to Companies House for public eye
- The club would be subject to provisions of Company Law as they are ran by 'Directors'

# Scottish Charitable Incorporated Organisation (SCIO)

- The first of 2 charity status where you can increase revenue through tax reliefs
- This is a new but common structure for sport organisations deemed 'not for profit' who are formed to undertake a charitable purpose.
- The structure provides a high degree of protection against personal liability.
- Unlike CASCs, SCIOs only have OSRC as a single regulator.
- There are a number of important differences that set the SCIO apart. Firstly, unlike other charities, the SCIO's existence is dependent upon its charitable status. This means that the SCIO must cease to exist if it is removed from the Scottish Charity Register. This is a very important point to consider before applying to become a SCIO.
- A club should carefully consider whether being a SCIO will meet their particular needs and the implications of such status. There are some important differences between being a SCIO and any other kind of body with charitable status in Scotland.
- Contact **basketballscotland** for clearer guidance on this legal status.

# Advantages and Disadvantages

## Advantages:

- A charitable organisation which is able to enter into contracts to: employ staff, incur debts, own property, to sue and to be sued.
- Provides reassurance for those entering into contracts
- Singular regulatory body (OSCR)
- Gift Aid and other tax reliefs can provide significant income streams

## Disadvantages:

- The club must have clear charitable purposes providing benefit to the community.
- The entity must cease to exist should it be removed from the Scottish Charity Register.



# Community Amateur Sports Club (CASC)

- The second legal status where revenue can come in the form of tax reliefs
- CASCs are sport clubs registered with HMRC.
- They should be deemed open to the whole community. The main purpose is to provide facilities for eligible sports to encourage participation.
- The club must be organised on an amateur basis.
- Once registered the CASC cannot then apply to be a charity
- The main aim of becoming a CASC would not be being tied to the charitable needs of a SCIO but can claim some tax rate benefits.

# Advantages and Disadvantages

## Advantages:

- Liable for Corporation Tax on their profits
- Some CASC activities are exempt from corporation tax

## Disadvantages:

- To apply as a registered charity, the CASC must be wound up and transfer assets and activities to the new charity
- Income limits apply
- There are management conditions which must be applied
- Must be open to the whole of the community

# Finally

Should you have any questions or require any support on legal status please contact Adam Szymoszowskyj at **basketballscotland** on:

[adam.szymoszowskyj@basketball-scotland.com](mailto:adam.szymoszowskyj@basketball-scotland.com)

We will aim to support you obtaining the legal status which will support the future of your club.