THIRD SECTOR
Dumfries and Galloway

Introduction to Governance Snapshots

Snapshots: Navigating your third sector journey

The primary purpose of Snapshots is to empower third sector organisations (TSOs) by providing concise, relevant, and practical information. Whether you're navigating the question of what type of legal structure to adopt or seeking insight into your volunteer management or funding strategy, our fact sheets are tailored to guide you through the complexities of the third sector landscape in a clear, concise, and accessible format.

Snapshots are designed to support you to be confident on your third sector journey whilst equipping you with the information, guidance, and signposting you may need. Snapshots provide helpful insight, however, we strongly recommend seeking independent advice when necessary, particularly for legal and HR matters. Each organisation is unique, and professional guidance ensures you receive personalised support that fits your specific needs.

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Third Sector Interface

What is a Third Sector Interface and what does it do?

Introduction

A Third Sector Interface (TSI) is an organisation that serves as a hub for supporting and connecting third sector organisations within a specific geographic area. The third sector encompasses charitable organisations, voluntary groups, social enterprises, and community organisations.

TSIs act as intermediaries that provide various services to help these organisations thrive, collaborate, and make a positive impact on their communities. They offer support in areas such as funding, training, volunteering, governance, and more.

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How can a Third Sector Interface assist you?

Third Sector Dumfries and Galloway (TSDG) is one of 32 Third Sector Interfaces in Scotland. It specifically serves the Dumfries and Galloway region. Our mission is to support and promote the third sector in the area, helping organisations make a difference and improve the lives of the people and communities of Dumfries and Galloway.

TSDG provide services, resources, and assistance to third sector organisations of all sizes and types, connecting them with valuable information, funding opportunities, training, and collaborative initiatives.

How can a TSI help you set up an organisation?

If you're looking to set up an organisation in Dumfries and Galloway, TSDG can provide a range of valuable support.

Guidance on Governance and Business Development: We can offer advice on setting up a new organisation, including legal requirements, governance structures, and registration processes. This includes support for informal groups, charities, social enterprises and indviduals looking to set up something new.

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Third Sector Interface

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Funding Support: We can help you identify potential sources of funding and provide guidance on writing grant applications

Training and Workshops: We offer training sessions and workshops on various topics, including, governance, business development, volunteering and funding.

Networking: We connect you with other organisations and community members, helping you build relationships and promote collaborative working.

Volunteer Recruitment: We can assist in your volunteer management programme by offering free training, review your volunteering practices and promoting your volunteer opportunities on our website.

Resources: We can provide resources and information on best practices, policies, and regulations relevant to the third sector.

Advocacy: We can advocate for the interests of the third sector and help raise awareness of community issues.

Forums/Networks: We have a range of forums and networks to allow organisations and groups to connect and learn from one another. We also use these to enable information sharing between sectors. These forums include; social enterprise, employability, children and young people, povery and inequality, health and social care and our chief officers group.

Employability: TSDG is committed to help increase employability for people in the region. The aim is to improve the capacity, scope, and influence of third sector employability provision in line with TSDG's mission and objectives.

Health and Social Care: Our dedicated team is here to promote the voice of health and social care in the third sector.

Summary

To get started, you can reach out to TSDG and inquire about our services for new and aspiring organisations. TSDG can guide you through the steps of setting up your organisation and provide you with the necessary tools to make your vision a reality.

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Governing document

What is a governing document and why do I need one?

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Introduction

A governing document is also known as a constitution or the Articles of Association depending on the legal structure of your organisation. It refers to a formal legal document that outlines the fundamental principles, rules, and structure that govern the operation and activities of an organisation. The governing document serves as a foundational guide that defines the organisation's purpose, objectives, membership criteria, governance structure, decision-making processes, and other important aspects. It provides a framework for how the organisation will function and interact with its members, stakeholders, and the wider community

Why do I need one?

A well-drafted governing document is crucial for ensuring that an organisation operates transparently, effectively, and in compliance with relevant laws and regulations. It provides a clear understanding of the organisation's structure and purpose to its members, stakeholders, and external parties. When establishing or operating an organisation, it is advisable to seek guidance to draft a governing document that aligns with the organisation's goals and adheres to legal requirements.

Key components?

Name and purpose: This specifies the organisation's name and clearly states its purpose, objectives, and powers. This section outlines the organisation's reason for existence and the goals it aims to achieve.

Governance structure: This outlines the structure of the organisation's governance, including the roles and responsibilities of trustees, management committee, and directors; how they are elected or appointed; and the duration of their terms.

Membership: Details about who can become a member, the rights and responsibilities of members, membership fees (if applicable), and procedures for admitting or terminating membership.

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Decision-making: This defines how decisions are made within the organisation, including meeting procedures, voting mechanisms, and requirements for making changes to the governing document itself.

Operational rules: Additional rules and regulations that govern the organisation's day-to-day operations.

Powers and limitations: This section outlines the organisation's powers and authorities, as well as any limitations placed on its activities. It may also define the scope of the organisation's activities.

Financial matters: Addresses financial matters, including how funds will be managed, who has authority over financial decisions, and how financial records will be maintained and audited.

Amendment procedures: The process for amending the governing document is usually specified, including the requirements for making changes and obtaining member approval.

Dissolution: This outlines the procedures to follow in the event that the organisation needs to dissolve or wind up its operations. This may include instructions for distributing assets in a manner consistent with the organisation's charitable or community-oriented purpose.

Miscellaneous provisions: Additional sections may cover topics such as dispute resolution, indemnification of officers, and any other relevant matters specific to the organisation.

Templates for model governing documents

TSDG use Scottish Council for Voluntary Organisations' (SCVO) recommended templates that are drawn up by Burness Paul Solicitors. They were involved in the original drafting of the charity legislation and are desgined to give you a starting point. You will need to adapt them to suit your organisation and, if necessary, seek advice to make sure they meet all your legal and regulatory requirements. Download them here - SCVO Model Constitutions

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The Scottish Governance Code

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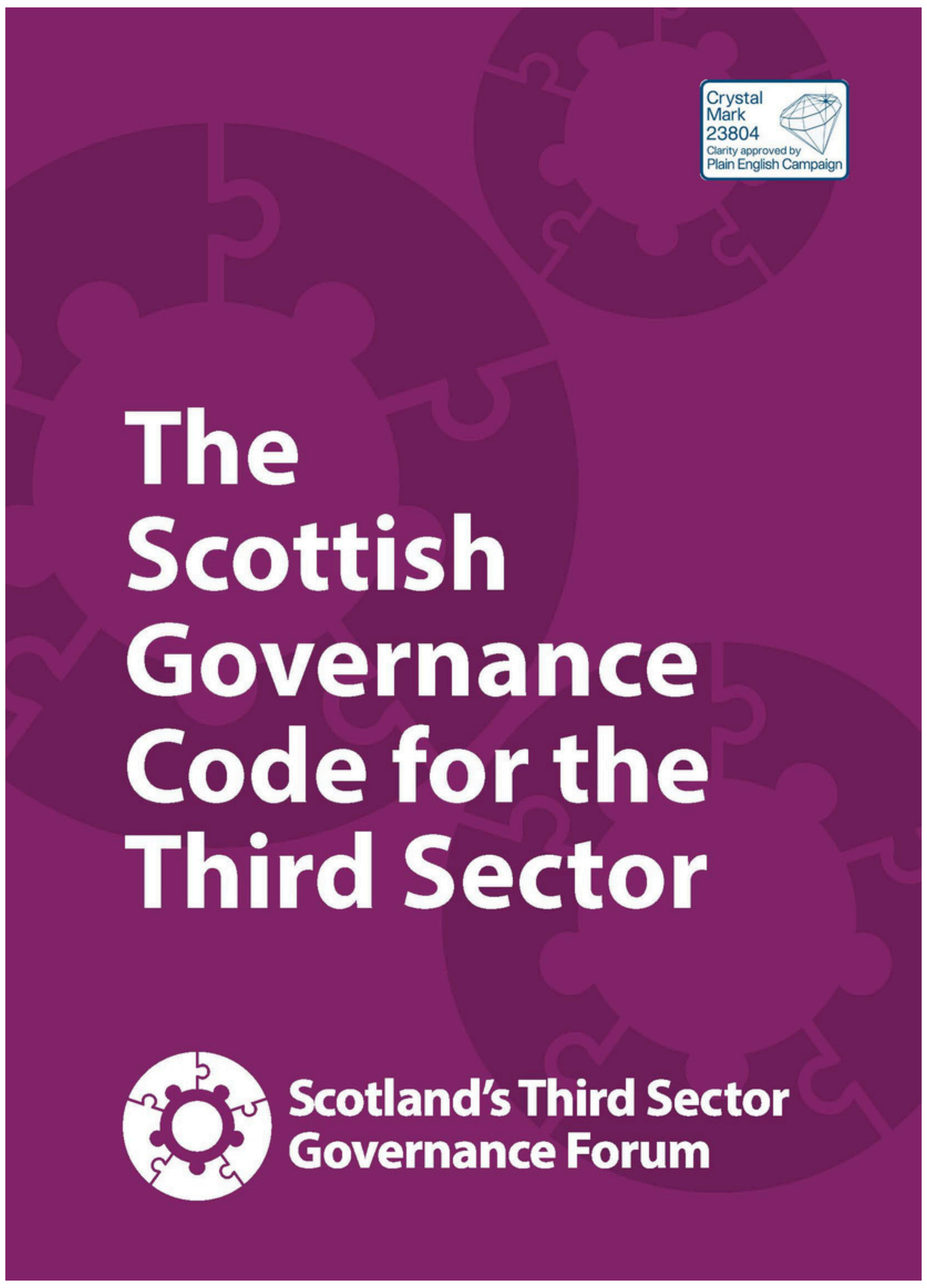
Introduction

The Scottish Governance Code serves as a valuable resource for organisations seeking to enhance their governance practices, build trust with stakeholders, and effectively carry out their charitable purposes. It encourages a culture of continuous improvement and accountability within the third sector in Scotland.

What is the Scottish Governance Code?

The Scottish Governance Code for the third sector is a framework of principles and guidelines that provide guidance on effective governance practices for charitable organisations and other third sector entities in Scotland.

The code is designed to help organisations improve their governance, leadership, and overall performance to better fulfil their missions and serve their beneficiaries and communities. The Scottish Governance Code is being reviewed in November 2023, TSDG will keep you up to date with any changes and amendments to this Code.



Key features?

Principles: The code outlines a set of five core principles that organisations should aspire to meet. These principles encompass issues like organisational purpose, leadership, integrity, decision-making, and accountability.

Guidance: Alongside each principle, the code provides more detailed guidance on how organisations can put the principles into practice. This guidance helps organisations

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understand the practical steps they can take to enhance their governance.

Levels of practice: The code includes three levels of practice - Foundation, Developing, and Leading. Organisations can self-assess their current practices against these levels to gauge their governance maturity and identify areas for improvement.

Adaptability: The code is designed to be adaptable to organisations of various sizes, types, and missions. It recognises that not all organisations will have the same resources or structures, so it provides flexibility in implementation.

Who in the third sector would use the Scottish Governance Code?

The Scottish Governance Code is intended for use by a wide range of third sector organisations. This includes:

Charitable organisations: Charities of all sizes and sectors, from social services to the arts, can benefit from the code's guidance to enhance their governance practices.

Voluntary and community groups: Smaller grassroots organisations and community groups can use the code to improve their governance structures and decision-making processes.

Social enterprises: Social enterprises that are focused on achieving social or environmental goals can align their governance practices with the code to ensure transparency and accountability.

Not-for-profit organisations: Any not-for-profit organisation operating in the third sector can utilise the code to strengthen its governance and leadership.

Boards and trustees: Boards of directors or trustees within these organisations can use the code as a reference to evaluate their governance practices and implement improvements.

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Different legal structures

What are the different legal structures, who are the regulators and what do they do?

Introduction

Groups operating in the third sector (charitable and voluntary sector) have several legal structures to choose from, each with its own features and implications. Below are the main legal structures available, along with explanations for each.

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Unincorporated/ voluntary association

An unincorporated association is the simplest legal structure and is normally a group of people who come together for a specific purpose, often with a written constitution. It lacks a separate legal personality, so members can be personally liable for the organisation's debts and liabilities. It's relatively simple to set up and operate but does not offer the same level of limited liability and legal recognition as other structures. They are not Regulated unless they apply for Charitable Status.

Scottish Charitable Incorporated Organisation (SCIO)

A SCIO is a legal structure specifically designed for charities. It provides limited liability for its members and separate legal personality for the organisation, which means it can enter into contracts, own property, and sue/be sued in its own name. SCIOs are regulated by the Office of the Scottish Charity Regulator (OSCR). This structure is popular due to its combination of charity status and limited liability.

Charitable Company Limited by Guarantee

This structure involves forming a company limited by guarantee with charitable purposes. It has a board of directors (trustees) who are responsible for the organisation's management and governance. Members provide a guarantee, usually a nominal amount, in case the company is wound up. Charitable companies are regulated by both Companies House and OSCR.

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Different legal structures

What are the different legal structures, who are the regulators and what do they do?

A Scottish Charitable Trust

This structure is similar to Charitable Trusts in England, but is specifically governed by Scottish trust law. A charitable trust is a legal arrangement where trustees hold and manage assets (such as property or funds) for charitable purposes. Trusts are unincorporated and therefore the trustees hold the liability. It requires a trust deed that outlines how the trust will operate and the purposes it will pursue. Charitable trusts can be private (family trusts) or public (open to the public). Trustees, manage the assets and ensure that they are used for charitable purposes outlined in the trust deed. Scottish Charitable Trusts are regulated by OSCR.

Community Interest Company (CIC)

A CIC is a company designed for social enterprises and community-oriented businesses. It allows organisations to pursue social objectives while also generating income. CICs are regulated by ORCIC the CIC Regulator and must demonstrate a "community interest" element in their activities. CICs' cannot become a charity.

Collective organisations such as Cooperatives and Community Benefit Societies

These are member-owned organisations that serve the interests of their members or the wider community. They can be used for social enterprises and cooperative initiatives. Members typically have a say in decision-making, and these structures often have social or community-driven objectives. They are regulated by the Financial Conduct Authority.

Summary

Each legal structure has its own advantages and considerations, including liability, governance, and reporting requirements. When choosing a structure, it's important to assess your organisation's goals, activities, and future plans to determine which option aligns best with your mission and vision.

We recommend that you seek legal advice and consult with experts before deciding what kind of legal structure you would like to be.

The Charity Test

What is the charity test?

The "charity test" is a key aspect of charity law in Scotland, outlined in the Charities and Trustee Investment (Scotland) Act 2005. For an organisation to be recognised and registered as a charity in Scotland, it must pass the charity test.

Who regulates charities in Scotland?

OSCR stands for the Office of the Scottish Charity Regulator. It is the body responsible for the regulation of charities in Scotland. In order to become a charity, you will have to pass the Charity Test.

The Charity Test: a two-part test

Part 1 - Charitable Purposes

The organisation must have charitable purposes as defined in the Act. There are a number of charitable purposes listed in the Act. These are as follows:

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health
- the saving of lives

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- the advancement of citizenship or community development
- the advancement of the arts, heritage, culture or science
- the advancement of public participation in sport
- the provision of recreational facilities, or the organisation of recreational activities
- the advancement of human rights, conflict resolution or reconciliation
- the promotion of religious or racial harmony
- the promotion of equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need
- the advancement of animal welfare
- any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

Part 2- Public Benefit

The organisation must provide (or, in the case of new organisations, intend to provide) direct or indirect public benefit in Scotland or elsewhere. This means that the benefits provided by the charity's activities must be balanced against any harm or detriment.

If the organisation's governance or operations provide undue private benefit to any individual or group, or if there are any unduly restrictive conditions on accessing the charity's benefits, it might fail this part of the test.

Conclusion

If an organisation fails either part of the test, it cannot be registered as a charity in Scotland. The OSCR regularly reviews registered charities to ensure they continue to meet the charity test

OSCR

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Who is the regulator for charities and what do they do?

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Introduction

The regulator for charities is the Office of the Scottish Charity Regulator (OSCR). OSCR is an independent public body responsible for regulating and overseeing charitable organisations in Scotland to ensure they operate in accordance with legal requirements and fulfil their charitable purposes.

The Charity Law Act 2005 will soon have five new changes, and these will give OSCR the Charity overseer more powers. We will keep you informed and up to date of these changes as they occur.

What does OSCR do for charities?

Registration: OSCR is responsible for registering new charities in Scotland. They assess applications to ensure that the proposed charity meet the charity test and have public benefit as well as charitable purposes.

Regulation: OSCR monitors charities to ensure they comply with charity law, meet their charitable purposes, and operate in the best interests of the public.

Guidance and Support: OSCR provides guidance and resources to charities on their legal obligations, reporting requirements, and best practices for governance and management.

Public Register: OSCR maintains a public register of charities in Scotland. This register provides information about charity names, addresses, purposes, and other relevant details.

Investigations: OSCR has the authority to investigate concerns or complaints about charities that may not be operating in line with their charitable purposes or legal obligations.

Dissolution: OSCR has the authority to dissolve charities if they are not complying with legal requirements or if it's in the public interest to do so.

Guidance and Training: OSCR offers guidance and training sessions to help charities understand their responsibilities and fulfil their

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OSCR

Who is the regulator for charities and what do they do?

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Annual Reporting: Charities are required to submit annual reports and financial statements to OSCR. These reports provide information about the organisation's activities, financial health, and impact.

Advantages of being regulated by OSCR: Being regulated by OSCR provides charities with several advantages:

- **Recognition:** OSCR's oversight grants recognition as a legitimate charitable organisation.
- **Public Trust:** OSCR's regulation helps build public trust in charity operations.
- **Guidance:** Charities can access guidance and support to ensure they meet legal obligations.
- **Compliance:** OSCR's oversight ensures charities adhere to charity laws and regulations.

Conclusion

If you're operating or considering setting up a charity, it's important to engage with OSCR to understand and fulfil your legal and regulatory responsibilities. OSCR's guidance and resources can help you navigate the requirements and ensure that your charity operates effectively within the legal framework.

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What is a SCIO?

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Introduction

A SCIO (Scottish Charitable Incorporated Organisation) is a legal structure specifically designed for charitable organisations. A SCIO can have a one-tier or a two-tier structure, each with its own characteristics and advantages.

One-tier SCIO

In a one-tier SCIO structure, the organisation's management and decision-making are handled by the same group of individuals, known as trustees. The trustees are responsible for both the governance of the SCIO and the day-to-day operations.

Advantages of one-tier

Simplified governance: Decision-making is streamlined since all decisions are made by the board of trustees.

Direct control: Trustees have direct control over both strategic and operational matters.

Agility: The organisation can make decisions more swiftly due to a simplified structure.

Two-tier SCIO

A two-tier SCIO is the most popular structure. In a two-tier SCIO structure, the organisation's governance is divided between two bodies: members and trustees.

The members – often consist of a larger group, have a role in electing or appointing the trustees. The members hold certain powers, such as approving changes to the constitution or removing trustees.

The trustees are responsible for the management and decision-making of the organisation.

Advantages of two-tier

Separation of powers: Dividing governance between members and trustees provides checks and balances, reducing the concentration of power.

Representation: Members can provide input and influence the direction of the organisation through their role in trustee appointments.

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Accountability: Trustees are accountable to members, enhancing transparency and oversight.

Choosing between one-tier or two-tier

The choice between a one-tier and a two-tier SCIO structure depends on the organisation's governance preferences and the complexity of its activities.

Complexity: Organisations with more complex operations or a need for more robust checks and balances may opt for a two-tier structure.

Size: A one-tier structure might be more suitable for smaller organisations where streamlined decision-making is preferred.

Involvement: If the organisation wishes to involve a broader membership base in decision-making and governance, a two-tier structure might be chosen.

Preference: Some organisations may prefer the direct control offered by a one-tier structure, while others may value the separation of powers in a two-tier structure.

Conclusion

At TSDG, it is our role to support you to make an informed decision on the most appropriate legal structure for you. Ultimately, the choice should align with the organisation's governance philosophy, objectives, and the desired level of involvement and oversight from members.

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Office of the Regulator of Community Interest Companies (ORCIC)

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Introduction

ORCIC is responsible for overseeing and regulating the activities of Community Interest Companies (CIC). A CIC is a business or type of company that has primary social objectives that want to use its profits and assets for public projects and to benefit communities. CICs must be limited companies when set up and cannot be a charity organisation although an existing charity can convert to a CIC with the correct permissions but will lose its charitable status.

Key functions of the CIC regulator (ORCIC)

COMMUNITY INTEREST COMPANIES

Registering and incorporating CICs: ORCIC is responsible for processing applications from organisations seeking to become CICs and ensuring that they meet the required criteria. ORCIC inform the Registrar of Companies House of any successful application so that a certificate of incorporation as a new CIC can be issued.

Monitoring CICs: The function of the Regulator is laid out in the Community Interest Company Regulations 2005 they provide informed advice and perform impartial and fair regulatory decisions including the 'light-touch regulation.' ORCIC monitors the activities of CICs to ensure they continue to meet the community interest test, which means that they must operate for the benefit of the community.

Providing guidance and support: ORCIC offers guidance and support to CICs, helping them understand their legal obligations and how to maintain their status as community-focused organisations.

Investigations: ORCIC has the authority to investigate concerns or complaints about CICs' activities or non-compliance with CIC regulations.

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Office of the Regulator of Community Interest Companies (ORCIC)

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Enforcement: ORCIC has the authority to take enforcement action against CICs that fail to meet their community interest test or breach their regulatory obligations.

Dissolution: ORCIC can intervene and dissolve CICs that fail to meet their community interest objectives or are not operating in line with CIC regulations.

Transparency: ORCIC ensures that information about CICs, including their names, addresses, and community interest statements, is publicly accessible. They do this by Maintaining the CIC Public Register, making information about these companies available to the public.

Promotion of CICs: ORCIC promotes the concept of CICs and encourages the growth of the sector.

Conclusion

It's important for CICs to engage with the CIC regulator to ensure they are compliant with regulations and are operating in a way that aligns with their community interest objectives. CICs can seek guidance from ORCIC to understand their responsibilities and fulfil their legal and regulatory obligations.

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Cooperative and community benefit society differences

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Introduction

A community benefit society (BenCom) and a cooperative are both forms of collective organisations, but they have distinct characteristics and purposes. While they share some similarities, they differ in terms of their focus, governance, and legal structure. Below is an overview of the differences between a BenCom and a cooperative, including how shares work in each context.

Focus and purpose

BenCom: Their primary focus is to benefit the community or a defined group of people. It operates for the common good and aims to achieve social or community objectives, such as community development, affordable housing, and other community-oriented initiatives.

Cooperative: This is a broader term that encompasses various types of member-owned organisations. While some cooperatives, like BenComs, may also have a community-oriented purpose, cooperatives can operate in different sectors, including agriculture, finance, and retail. Their primary goal is to meet the economic, social, and cultural needs of their members by providing goods, services, or resources.

Governance

BenCom: They have a democratic governance structure, where members have voting rights and participate in decision-making processes. The governance structure is designed to ensure that the organisation's activities align with its community-oriented objectives.

Cooperative: Cooperatives also have a democratic governance structure, where members collectively make decisions and elect representatives. The specific governance processes may vary depending on the type of cooperative (e.g., consumer cooperative, worker cooperative).

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Legal structure

BenCom: A BenCom is a specific legal structure under the Co-operative and Community Benefit Societies Act 2014 in the UK. It is designed to ensure that the organisation operates for the benefit of the community and adheres to an asset lock, which prevents the distribution of profits to members. Alternatively, members are rewarded by the benefit the BenCom provides to the community/public.

Cooperative: The term "cooperative" refers to a general concept of member-owned organisations. Cooperatives can encompass different legal structures, including community benefit societies, industrial and provident societies. The specific legal framework may vary based on the type of cooperative and the jurisdiction. In general, a cooperative is designed to ensure shareholders can make profits by investing.

Shares

BenCom:
Members may purchase shares or contribute capital to the society. However, the focus of shares in a BenCom is not typically on financial returns but rather on ownership and participation in the organisation's activities. Members often have one vote each, regardless of the number of shares held.

Cooperative: In a cooperative, shares represent ownership in the organisation. Members purchase shares to become owners and participants. Shares in cooperatives may confer voting rights, and members may also receive dividends or patronage refunds based on their level of participation or usage of the cooperative's services.

Conclusion

Both operate on cooperative principles and share certain features but have distinct focuses and legal structures. BenComs are specifically designed for community benefit and adhere to an asset lock, while cooperatives encompass a broader range of member-owned organisations across different sectors. The role of shares differs between the two, with shares in BenComs often emphasising ownership and participation, and shares in cooperatives often representing ownership and potential financial returns.

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Memorandum of Understanding

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Introduction

A Memorandum of Understanding (MoU) is a formal written document that outlines the terms, principles, and intentions of an agreement or partnership between two or more organisations. While a MoU is not a legally binding contract, it serves as a clear statement of intent and understanding between the parties involved. It lays the groundwork for collaboration and cooperation by defining the roles, responsibilities, and expectations of each organisation.

When to use an MoU

Partnerships: When two or more organisations want to collaborate on a specific project, initiative, or event, a MoU can clarify the terms of the partnership, roles, and responsibilities.

Resource Sharing: When organisations intend to share resources, expertise, or facilities, a MoU can outline how the resources will be shared and managed.

Joint Initiatives: When organisations are joining forces to address a common goal, such as advocacy efforts, research projects, or community development, a MoU can formalise the collaboration.

Networking: In the context of networks or associations, a MoU can define how members will work together and what benefits they can expect from the network.

Exploratory Projects: In cases where organisations are considering a more formal agreement but want to establish a foundation for collaboration first, a MoU can serve as a starting point.

Key aspects of MoU

Background: Explain the problem, issue, or opportunity that the partnership will help to improve. Much like a vision statement.

Parties Involved: Identify the organisations or parties entering into the agreement. It may also include a brief description of each organisation's purpose or mission.

Objectives: Outline the goals, objectives, or specific projects that the parties intend to collaborate on. It clarifies the partnership's purpose

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and what the organisations aim to achieve together.

Roles and responsibilities: Define the roles, responsibilities, and contributions of each party. Outline who will do what, what resources will be provided, and how the collaboration will be managed. Think about the appointment of members of staff and/or trustees to lead on the work of the partnership. This may be a person or an equal number of representatives from each organisation. Voting shouldn't be unequal. This could also sit under parties involved.

Duration: Specify the duration of the agreement, including a start date and an end date or conditions under which the agreement can be terminated. Consider possible agreement reviews.

Confidentiality: If necessary, include clauses related to the confidentiality of information shared between the parties during the collaboration.

Dispute Resolution: Outline the procedures for resolving disputes or disagreements that may arise.

Financial contributions: Some may choose to set up funds to ensure that the activities are fully covered, at the beginning this may be consultation works, consultants etc. Detail financial contributions to be made, and where the fund will sit and how it will be managed.

Signatures: The MoU is typically signed by authorised representatives of each organisation, indicating their agreement to the terms outlined in the document.

Disclaimer: *A MoU is not a legally binding document; it is a statement, agreed by equal partners. It does not constitute the creation of a legal entity or give anyone within the partnership the authority to make binding commitments on its behalf. This snapshot is intended solely as information. TSDG does not engage in matters between parties, nor does it offer comments, suggestions, or document reviews for this type of document. Seek independent advice from reputable agencies and organisations specialising in cooperation agreements.*

Summary

A MoU helps create transparency, alignment, and a shared understanding between organisations entering into a partnership or collaboration. While it may not be legally binding, it carries the weight of goodwill and mutual commitment, providing a framework for cooperation.

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Terms of reference

What is a terms of reference and when to use one?

Introduction

A terms of reference (ToR) is a document that outlines the scope, objectives, roles, responsibilities, and processes of a specific project, task, committee, or working group. It serves as a guiding document that provides clarity on what is expected, how activities will be carried out, and how outcomes will be achieved. A ToR is often used to ensure that everyone involved in a project or initiative has a common understanding of the project's goals and parameters.

When to use a terms of reference

Project management: ToRs are essential for defining the scope, objectives, and roles of a project, within a team or with partners from different disciplines and/or departments. They provide a blueprint for successful project execution.

Committees and working groups: When establishing committees or working groups, ToRs ensure that members understand their roles, responsibilities, and the purpose of the group.

Consultancies or partnerships: When working with external consultants or partners, ToRs clarify the expectations, deliverables, and responsibilities of all parties.

Research initiatives: ToRs are useful for research projects, outlining the research objectives, methodology, timelines, and expected outcomes.

Task forces: When tackling specific tasks or challenges, ToRs guide the activities of task forces or special projects.

Change management initiatives: During organisational change, ToRs provide guidance for change management teams or steering committees.

Key elements

Title and purpose: Start with a clear title that reflects the purpose of the document. It explains the project, task, or committee's overall objective and what it aims to achieve.

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Scope: This should define the boundaries of the project or task. The scope outlines what is included and what is excluded from the resctrictions/confines of the initiative.

Objectives: These list the specific goals and outcomes that the project or task intends to achieve. These objectives should be measurable and aligned with the project's purpose.

Roles and responsibilities: This section outlines the roles and responsibilities of individuals or groups involved in the project. This includes project sponsors, team members, leaders, and any other relevant parties.

Timeline and schedule: This should include information about the project's timeline, key milestones, and deadlines. This helps ensure that the project progresses according to the intended schedule.

Resources and budget: This outlines the resources needed for the project, including human resources, budget allocation, equipment, and materials.

Decision-making process: This describe how decisions will be made within the project, including who has the authority to make decisions and how stakeholders will be involved.

Communication plan: This details how communication will be managed among project stakeholders, team members, and other relevant parties.

Reporting and monitoring: Specify how progress will be monitored, what reporting mechanisms will be used, and how feedback will be collected and acted upon.

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Summary

Overall, ToRs provide a structured framework for managing projects, initiatives, and collaborative efforts by establishing clear expectations and defining how things will be accomplished.

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Memorandum of understanding vs terms of reference

GOVERNANCE SNAPSHOT

Introduction

A Memorandum of Understanding (MoU) and a Terms of Reference (ToR) serve different purposes.

Memorandum of understanding:

A MoU is a non-binding agreement that outlines the broad goals and intentions of parties involved in a collaborative effort. It establishes the framework for cooperation and understanding between organisations or individuals. It often focuses on the overall vision, objectives, and general terms of cooperation without delving into specific operational details.

Terms of reference

A ToR provides detailed guidelines and instructions for the planning, implementation, and management of a specific project, task, or committee. It is more specific and operational than an MoU. It defines roles and responsibilities, timelines, budgets, and other practical aspects of a project or committee's functioning.

Using these in conjuction

These two documents can be used together. For example, a MoU can set the overarching principles and goals of a collaborative effort between multiple organisations within the sector. Then, a ToR can be created for a specific project or initiative resulting from that collaboration, detailing how the project will be executed, who will be responsible for what, and other operational specifics.

Using both documents together ensures that there is a clear understanding of the strategic objectives (MoU) and the practical implementation details (ToR). This approach helps maintain transparency, accountability, and effective collaboration.

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Trading as a charity

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Introduction

Trading can be carried out directly by the charity, if it has the power in its governing document. There are three types of trading which will be outlined in more detail below.

Primary purpose trading

This is where the trading activity directly contributes to the charity achieving its purposes. Examples of primary purpose trading are:

- A health care charity providing therapies and treatments in return for fees.
- A charity for disabled adults selling goods made by the beneficiaries.
- A further education college running a restaurant operated by students as part of their catering course.

Tax law implications: If HMRC are satisfied that the trading is primary purpose trading, and the profits are applied for the purposes of the charity only, you will not pay tax on profits made from this trading.

Ancillary purpose trading

This does not directly advance a charitable purpose; but contributes to its success. Examples of ancillary trading are:

- The sale of stationery or text books by a college to its students.
- The provision of a paid for crèche for the children of parents who are students attending a training course.
- The sale of refreshments to audiences at a theatre performance.

Tax law implications: Ancillary trading can still be said to be exercised in the course of the carrying out a primary purpose. If HMRC are satisfied that the trading is ancillary, it is therefore part of the primary purpose trade and will be exempt from direct tax.

Non-primary purpose trading

This is where the trading itself does not advance the charity's purposes or provide public benefit. The trading is carried out to raise funds for the charity, but it is not a charitable activity. Anything which is not primary purpose or ancillary trading falls into this category. Charities

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Trading as a charity

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might carry out non-primary purpose trading to fulfill social objectives outside the charity's main purpose or simply to raise funds. Examples of non-primary purpose trading are:

- the sale of Christmas cards or calendars to raise funds for the charity.
- the operation of a cafe bar at a theatre, which is open to the general public.

Tax Law implications: If a charity carries out non-primary purpose trading, it will have to pay income or corporation tax on its profits from those activities, unless the level of trade that isn't primary purpose falls within:

- specific exemptions in tax law (for example a fundraising event)
- or the charity's small trading tax exemption limit. The small-scale exemption is an exemption from corporation tax on the profits from small-scale non-primary purpose trading by charities. It applies only where all the profits or income are applied for the charity's purposes.

You can find more information on charities and tax at this link: *Charities and tax: Overview - GOV.UK (www.gov.uk)*

If the trading activity is considered to be of significant risk, you should first decide if the activity should be carried out at all. If you decide it is worth the risk, then you should look at establishing a separate trading subsidiary/trading arm. The main reason a charity sets up a trading arm is to undertake non primary purpose trading as a way to generate income for the charity.

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Arms-length trading

What does arms-length trading mean?

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Introduction

Arms-length trading typically refers to the practice of setting up a separate legal entity or organisation that operates at arm's length from the local government or public sector authority. This entity is often used to deliver specific services, such as housing, leisure, or economic development, with a degree of independence and commercial focus. There is no specific limitations on what type of legal structure you may want. however, once you have chosen it you will have to comply with the regulators.

Main goals

Generate income: Arms-length organisations may engage in commercial activities, which can generate income for the local authority.

Increase accountability: Creating a separate entity can help clarify lines of responsibility and accountability for service delivery. Usually, arms-length trading is a motivated move by the Council or the public sector authority and comes with written and financial agreements.

Enhance efficiency: By operating more like a business, these entities can often provide services more efficiently and cost-effectively than traditional government departments.

Access funding: These organisations may have more flexibility in accessing funding from various sources, including commercial loans and private investments, Arms-length organisations may also qualify for business rates relief.

It's worth noting that the specific structure and functions of arms-length trading organisations can vary depending on local government decisions and the services they aim to provide.

If it's a private property and not owned by the council or any public sector entity, then it would not fall under the category of arms-length trading. Arms-length trading typically involves entities that are set up by public sector authorities to provide specific services while maintaining some degree of independence.

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Arms-length trading

What does arms-length trading mean?

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A private property would be owned and/or leased and operated by individuals or a private business entity, and it would function as a commercial enterprise.

The owners of such establishments are responsible for their operations, including compliance with relevant laws and regulations, licensing, and financial management.

Arms-length trading and charitable status

Arms-length organisations may achieve charitable status, however it must meet the charity test.

In terms of the Charities and Trustee Investment (Scotland) Act 2005. In some situations, a body is prevented from being a charity even though it appears to have charitable purposes and provide public benefit. This is the case if:

- The body's constitution permits distribution or use of its property for a purpose which is not charitable
- The body's constitution expressly permits Ministers to direct or otherwise control its activities
- The body is a political party or one of its purposes is to advance a political party.

Advantages of a trading arm

- Protects the charity's assets from the risks of trading.
- Allows trading activity that the charity can't carry out.
- Reduces tax liabilities arising from trading activity.
- Provides clarity and transparency as to what the charity does and what the trading arm does.

Disadvantages of a trading arm

- Cost and resource implications of setting up and running a new company.
- Could lead to a loss of rates relief if the trading arm uses the charity's property.
- Charity trustees have additional responsibility over the trading arm as well as the charity.
- Group structures and more complex accounting arrangements.

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Displaying your charity number

There are specific requirements for displaying a charity registration number.

Website

If your charity has a website, you should prominently display your charity registration number on your site. This helps visitors to your website verify your charitable status easily. It is usually recommended to display it in the website footer or on a dedicated "About Us" or "Legal Information" page.

Publications

In any printed materials, including leaflets, brochures, and annual reports, you should include your charity registration number. This helps in providing transparency and credibility to your organisation.

Signage

If your charity has a physical presence, such as an office or shop, you may be required to display your charity registration number on signage.

Digital communications

In email signatures and other digital communications, it is good practice to include your charity registration number, especially if your organisation frequently communicates with the public through these channels

Reasons for these requirements include:

Transparency: Displaying your charity registration number is a means of demonstrating transparency and accountability to the public. It helps donors, stakeholders, and the general public verify your charitable status easily.

Preventing fraud: By requiring charities to display their registration number, it helps to prevent fraudulent or unregistered organisations from posing as registered charities. This safeguards the interests of donors and the public

Building trust: Displaying your registration number in various materials and communications helps build trust with your audience. It shows that your organisation is accountable to a regulatory body and adheres to certain standards.

Legal compliance: Displaying the charity registration number is a legal requirement for registered charities. Non-compliance with these requirements could result in penalties or consequences for the charity.

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