

THE SCOTTISH CHARITABLE INCORPORATED ORGANISATION

This Fact Sheet is one of a series provided to assist Charities

Introduction

Sections 49 – 64 of the Charities and Trustee Investment (Scotland) Act 2005 Act (“the Act”) (see www.opsi.gov.uk/legislation/scotland/acts2005/20050010.htm) introduce and provide for the new Scottish Charitable Incorporated Organisation (the SCIO - pronounced “skio”), specifically for Scottish charities, with effect from 1st April 2011.

The SCIO

The SCIO provides limited liability without being a company. It is regulated by the Act and separate Regulations and the sole regulator is the Office of the Scottish Charity Regulator (OSCR).

History

Historically, the SCIO comes from a proposal originally made in the 1990s and endorsed by the Charity Commission of England & Wales in 2001. This model is intended to provide a relatively simple type of charity, either as a single tier model (where the Trustees are the only members) or as a two-tier model (where there is a membership and a separate Board of Trustees). The SCIO may have advantages particularly for charities which do not wish to be regulated both by the Act and by the Companies Act 2006.

Advantages

Advantages of a SCIO include:

- it is the only legal vehicle specific to charities – being a SCIO means that there is immediate recognition by third parties that the organisation is a Scottish charity
- it has a separate legal personality, which means that property can be held in its name and that it can enter into contracts in its own name (like a Guarantee Company, but unlike a Trust or an unincorporated association)
- it provides limited liability to its members, who do not have to make a contribution to its assets if there is a shortfall upon its dissolution (members of a Guarantee Company are usually required to contribute £1 each, whilst Trustees of a Trust and members of an unincorporated association have unlimited liability)
- it provides protection to third parties and creditors who deal with the SCIO
- OSCR will be its sole regulator, with a ‘light-touch’ regulatory process (unlike a Guarantee Company, it will have no involvement with Companies House, although a SCIO will still need to be approved by HM Revenue & Customs in respect of charitable tax relief).

Duty of a SCIO’s Members

The members of a SCIO have a greater legal duty than the members of other types of charity, in that they have the same legal duty as the SCIO’s Trustees to

ensure, in good faith, that the SCIO acts in a manner which is consistent with its Charitable Purposes (members of any other type of charity who do not share this duty with its Trustees).

Main Features

The main features of a SCIO include:

- a SCIO can be a two-tier organisation, with members and Trustees, or a single-tier organisation, with Trustees who are also the members
- there must be a minimum of two members
- there must be a minimum of three Trustees
- *either* its name must include the words “Scottish Charitable Incorporated Organisation”, “SCIO” or “S.C.I.O.”, *or* otherwise the fact that an organisation is a SCIO must clearly be stated on all its documents and website
- there must be at least one members’ meeting each year
- there are minimum features which must appear in a SCIO’s constitution, including its Charitable Purposes, the appointment and removal of members and Trustees, the management of both members’ and Trustees’ meetings and rules for dealing with conflicts of interest
- a register of a SCIO’s members and Trustees must be maintained
- application to become a SCIO must be made in the prescribed format to OSCR
- once a charity becomes a SCIO, it can only be a SCIO (and cannot change to any other legal form) and, except upon its dissolution, can transfer its assets only to another SCIO.

Conversion

From 1st January 2012, it will be possible for an existing Guarantee Company to apply to convert into a SCIO, should that be considered appropriate. This is a one-way system, however, as a SCIO cannot convert into a Guarantee Company.

Merger

The merger of SCIOs will also be possible from 1st January 2012.

Appropriateness

A SCIO is not necessarily suitable for every prospective or current charity. Careful planning is therefore required to ensure that the right legal vehicle is chosen for a charity – be it a charitable trust, unincorporated association, Guarantee Company or SCIO - and expert advice from the charity’s lawyers and accountants is essential.

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Although carefully prepared, this Fact Sheet is a guide only and is not intended to be comprehensive. Specific advice should be requested on individual situations.