

# GUIDANCE NOTES

## ARTICLES OF ASSOCIATION - PRIVATE COMPANY LIMITED BY GUARANTEE – CASC STATUS

**This is only intended as a guidance note, if you have any specific queries please take independent legal advice.**

To be a CASC a sports club must register with HMRC under section 658 of CTA 2010 (HMRC has provided some model clauses which are referred to in this guidance). Registering as a CASC enables the club to benefit from a range of tax reliefs that are similar to those available to a charity, but not as extensive.

Registered CASC status is completely separate from a sport club's legal structure. Provided its constitution meets the registration requirements, a sports club can adopt a number of different legal structures. The most common are:

- An unincorporated association.
- A company limited by guarantee

A sports club is “entitled” to be registered as a CASC if it:

- Is, and it has a written constitution that requires it to be, a club that:
  - is open to the whole community
  - is organised on an amateur basis; and
  - has as its main purpose the provision of facilities for, and the promotion of participation in, one or more eligible sports.
- Meets the location condition, which requires it to be set up and provide its facilities in a member state of the European Union.
- Meets the management condition.
- Meets the income condition. This limits the amount of income that a CASC may receive from both trading with anyone who is not a full voting member of the club (such as income from a club shop, café or green/court fees) and from property to a combined total of £100,000 during any 12-month accounting period.

Should you choose to register your club as a CASC and decide that incorporation as a company limited by guarantee is appropriate, there is an LTA Template Articles of Association for a CASC (**Articles**) which should be read in conjunction with this guidance and amended in accordance with your club's needs.

Articles of association can either be adopted on incorporation by including the said articles of association in the application to incorporate a company (Form IN01, section A8) or they can be adopted post-incorporation by a resolution passed by 75% of the voting Members (this can usually be by either a written resolution or a resolution at a general meeting of the Members). The resolution and articles of association then need to be sent to Companies House at Companies House, Crown Way, Cardiff CF14 3UZ within 14 days of the resolution being passed.

### Company Name



Care should be taken in choosing a company name. There are restrictions on the choice of registered name that a company may adopt. It must also include the appropriate ending (for example, Limited, plc, c.i.c). The Registrar of Companies will refuse registration of any unacceptable name.

## Articles 2 and 3- Object & Powers

The objects and powers of a club set out the purpose of the club and its authority to pursue that purpose organisationally. Unless you specifically limit this in your Articles, the objects and powers are unlimited and the club can carry out any business activity.

The Sport England Code for Sports' Governance (**Code**) states that the club should have a clear purpose-why the organisation exists and the area of work it is involved with.

To qualify as a CASC the objects must demonstrate that the club will be open to the whole community without discrimination, non-profit making and provide its Members and their guests with only the ordinary benefits of an amateur sports club.

Ordinary benefits are defined to include any of the following:

*Providing sporting facilities.*

*Reasonably providing and maintaining club-owned sports equipment.*

*Providing suitably qualified coaches.*

*Providing, or reimbursing the costs of, coaching courses.*

*Providing insurance cover.*

*Providing of medical treatment.*

*Reimbursing reasonable travel expenses.*

*Reasonably providing post-match refreshments for players and match officials.*

*Selling or supplying food or drink as a social benefit that is incidental to the sporting purposes of the club. It is not therefore acceptable to supply food and drink generally as a benefit of Membership.*

Ordinary benefits has been extended to allow CASCs to pay:

1. Players up to £10,000 in a 12 month accounting period to play for the club.
2. More generous travel and subsistence expenses when participants attend away matches.

Article 2.1 is the model clause provided by HMRC to ensure the main purpose requirement is met, however, your club may wish to extend the objects by including objects as set out in Article 2.2.

The Articles should include the club's long term goals, what you want to achieve and how you want to achieve it. Please consider each of these and amend as necessary.

It is common practice to set out the powers which the club may exercise in pursuit of the objects in a separate Article, including a "blanket" power for the club to do anything that can be said to be in support of its objects, as long as it is legal.

However, unless the club is a charity, the club's ability and the powers of its directors to bind the club (by entering into contracts for example) will not be limited by the powers set out in this Article.

Please consider each of these and amend as necessary.

## Article 4- Income

A limited company is allowed to distribute its profits to its Members provided there is nothing in its Articles to the contrary. However, to qualify as a CASC the Articles require:

- its income to be re-invested in the club;
- that dividends (or returns of capital) to its Members are prohibited; and
- all the assets that would otherwise be available to its Members generally on its winding up be applied for approved sporting or charitable purposes.

Article 4.1 is the model clause provided by HMRC to ensure qualification for CASC status.

## Article 5- Winding Up

On a winding up or dissolution of the club, this Article prevents any surplus assets that remain after all the club's debts and liabilities have been paid off from being distributed to Members. Such assets must be applied for approved sporting or charitable purposes to meet the CASC criteria.

Article 5.1 is the model clause provided by HMRC to ensure qualification for CASC status.

## Article 6- Guarantee

Members are liable to a company limited by guarantee, to the extent of their guarantees (usually a nominal amount, in the template Articles we have set this at £1 per member), but only if the club is wound up and a contribution is needed to enable its debts to be paid. This amount is not an asset of the club but should the club be wound up the Members will be required to pay this.

A company limited by guarantee must deliver a statement of guarantee under the legislation.

## Articles 7 to 23- Directors

The directors of the club (**Directors**) will owe the following statutory duties to the club:

- To act within powers;
- To promote the success of the club;
- To exercise independent judgment;
- To exercise reasonable care, skill and diligence;
- To avoid conflicts of interest;
- Not to accept benefits from third parties; and
- To declare an interest in a proposed transaction or arrangement.

The Directors will have control of the day to day running of the club, however, the Members can direct the Directors to take or refrain from taking specified action (as set out in Article 11).

### Number and Composition of Directors

Legislation provides that your club must have at least one Director who is a human being and not a company.

Please consider the minimum number of Directors required by your club. We would recommend you do not set this number too high as you will need to find volunteers to act as Directors and if you do not meet the



minimum number the club will be unable to take any decisions. We would recommend between 3 and 8 Directors.

Each club will be slightly different but it would be normal to specify which positions sit on the board of Directors. The template Articles include a Chair, Treasurer and a number of Independent Non-Executive Directors. Please amend as necessary.

The Code requires that at least three of the Directors must be unrelated or non-cohabiting.

### **Appointing Directors**

The template Articles require the club (i.e. the Members) to appoint the Directors. The Code requires that in deciding who sits on its board of Directors the club considers the skills and diversity required.

To qualify as a CASC the Directors must meet HMRC's fit and proper test.

### **Retirement of Directors**

The Code states that Directors should be subject to regular election and ideally should serve no more than 9 years.

Please consider how long a Director should hold office and how many terms he or she can serve. You should allow Directors a chance to settle into the role and an opportunity to make a change before they are subject to re-election and it is common to see terms of 2 or 3 years. Please amend as appropriate.

### **Directors' delegation**

Please consider whether the Directors should be able to delegate their powers as they see fit. The club may want to establish committees for example safeguarding and disciplinary committees.

Please remove Article 12 and 13 if the Directors should not be able to delegate and remove Article 14 if the Directors should be able to delegate.

### **Calling a Director's Meeting**

The Code requires regular meetings (at least four times a year) decisions of which should be recorded. Please consider the minimum number of times a year the Directors of your club should meet and amend accordingly.

Please consider how much notice of a meeting the Directors should be given.

### **Quorum for Directors' Meeting**

The quorum of a meeting relates to how many Directors must be in attendance (this can be in person/on the telephone/over skype) for the board of directors to be able to make decisions.

The Article provides for a quorum of 50% of appointed directors being at least two eligible directors but this can be increased at your option.

### **Chairman and Casting Vote**

The Directors can appoint a Director to chair the director meetings.

Please consider whether the chairman of a Directors' meeting should be entitled to a casting vote should the voting for and against be equal. By giving a chair a casting vote it allows the club to move forward but does give one individual more power.



## Directors' Conflicts of Interest

The Code requires conflicts of interest are recognised, managed by the chair and recorded.

## Article 24- Secretary

A private company is not required to have a company secretary. Usually a company secretary will deal with the company's administrative tasks.

## Articles 25 to 28- Members

### Membership

You need to decide who will be entitled to be a Member of your tennis club. For companies limited by guarantee without a share capital, Membership does not depend on a holding of shares. Members must agree to become a Member of the club and have their names entered in the register of Members.

This Article provides that no person shall become a Member of the club unless he or she has completed an application form in the form approved by the Directors.

To qualify as a CASC the application process adopted by the Directors must be open and non-discriminatory. Article 25.1 is the model clause provided by HMRC to ensure qualification for CASC status.

The Code seeks to promote greater diversity and an inclusive approach. Your club should take all reasonable steps to ensure you are accessible and non-discriminatory to all sections of the community.

Sometimes, the Directors may wish to establish different classes of Members to provide for different categories of Member. For example, a club may have junior or associate Member who may pay a lesser subscription price. Included here would be a definition of the various categories of Membership.

To qualify as a CASC all Members must have the right to vote and we have therefore included a restriction on the Directors able to create a class of Members that are non-voting.

Members have various rights which are set out in both statute and in the Articles. These rights, amongst other things, enable the Members to censure decisions of the directors and, ultimately, to remove them from office. The vast majority of the Members' statutory rights cannot be limited or removed by the Articles.

Rules and by-laws in addition to the Articles may prescribe the rights and obligations of the Members or classes of Membership.

In this section the club should include the costs of the Membership categories, how and when it should be paid to the club and the processes for joining the club as a Member.

To qualify as a CASC there is a limit set on the fees and other costs that a club can charge its Members:

- The maximum costs associated with Membership of a CASC are set at £520 a year (£10 a week).
- A club can charge more than this, subject to an upper Membership fee limit of £1,612 a year (£31 a week). However, it must make special arrangements to ensure that those who are unable to afford such fees can participate fully in the club's sporting activities for no more than £520 a year.

To qualify as a CASC your club cannot have more than 50% of its Members as social Members (i.e. not participating in tennis).

### Transfer of Membership



Please consider whether you wish Members to be able to transfer their Membership. It would be unusual for a club to allow the transfer of Membership.

If Membership is transferable, delete Article 27. If Membership is not transferable, delete Article 26.

### **Expulsion of Members**

It is sensible in this section to include when someone ceases to be a Member or has his or her Membership withdrawn.

The Article refers to the club's disciplinary procedure, we would expect to see this in the Rules. This can be included here, however, it will be easier to amend and update if it is dealt with separately.

A Member facing expulsion is entitled to make representations in writing or in person as to why his or her Membership should not be terminated. The Members have to consider his or her views before coming to a decision. Once the Members have come to their decision there is no further right of appeal.

The Article provides that an expelled Member will remain liable to pay any sums owed by him or her.

## **Articles 29 to 45- Decision Making by Members**

### **Resolutions**

In accordance with company law, there are a number of matters which the Directors are unable to action without the approval of the Members including but not limited to:

- adopting new articles of association;
- approval of loans to Directors;
- ratification of acts by Directors; and
- approval of agreement for transfer of non-cash asset.

These matters are approved by either ordinary resolutions or special resolutions passed at a general meeting or by a written resolution.

**Please seek independent legal advice for more information regarding what resolutions are required.**

### **AGM**

You may wish to include in the Articles a requirement to hold a general meeting at least once a year. This is usually a good opportunity for the Directors to present the financial accounts to the Members and give Members an opportunity to discuss the plans for the Club.

### **Persons entitled to receive notice of meetings**

To qualify as a CASC all Members must be full Members with voting rights. This Article therefore states that all Members have the right to receive notice of general meetings.

Other persons might include:

- LTA representative;
- Umpire;
- Any representatives of tournaments you participate in.

### **Quorum for general meetings**



The quorum of a general meeting relates to how many Members must be in attendance for the general meeting to pass any resolutions.

The Article provides for a quorum of at least 50% of Members entitled to attend but not less than 2. This can be increased or decreased at your option. Bear in mind that if you have a large membership base, you may find it difficult to get the minimum number required in order to reach quorum level.

### **Votes of Members**

As stated above, to qualify as a CASC all Members must have the right to vote.

### **Article 47- Rules**

This Article provides for rules to be drawn up by the Directors rather than the Members. Rules can be amended more easily than Articles and therefore, provide greater flexibility.

Examples of the matters which may be set out in the rules rather than the Articles are:

- the conduct expected of the Members;
- the Membership fee;
- the application form required.

Rules are not required to be registered at Companies House and therefore a member should be referred to the rules when he/she applies for Membership.

The Articles shall prevail over the terms of the rules in the event of a conflict.