

# Memorandum

## Checklists

# Memorandum

## Memorandum – company incorporation

### Introduction

Below is a checklist for memorandums of sports organisations wishing to incorporate. There is also a checklist for those ‘older’ sport organisations who have incorporated prior to Oct 1, 2009 and therefore have memorandums and articles of association that they wish to alter.

### Overview

The initial members of a company are its ‘subscribers’ on incorporation. They automatically become the first members as the certificate of incorporation is issued by the Registrar of Companies.

A charitable company must usually have at least three initial members (i.e. three subscribers).

### Checklist

- The subscribers must be stated on the memorandum.
- The memorandum is one of the various documents required to incorporate a new company.

### Procedure

- Most new incorporations are filed at Companies House by electronic communication (using an electronic version of the memorandum).
- It remains possible to file a paper-based application for incorporation; however, the statutory incorporation fee is significantly higher.

### Filing requirements

- The names of the subscribers must be provided to Companies House in order to incorporate a new company.

# Memorandum

## Notes

- For a share company, it is not necessary to state in the memorandum how many shares each subscriber is taking (Companies House will reject the document if that information is included).
- It is important to distinguish the memorandum required to notify the names of the first members when a new company is incorporated in accordance with the Companies Act 2006) from the old style 'memorandum' that formed part of an old company's constitution under the Companies Acts 1985–1989. See checklist: 'Memorandum – old companies'.

## Memorandum – old companies

### Overview

'Old' companies incorporated prior to 1 October 2009 had a two-part constitution:

- memorandum of association, which largely dealt with the external aspects of the company; and
- articles of association, which largely dealt with the internal administration of the company.

A new company, incorporated on or after 1 October 2009 under the Companies Act 2006 rules and procedures, simply has articles.

### Checklist

- The memorandum of an old company (limited by guarantee) contained these provisions:
  - the name of the company (at incorporation);
  - a statement of the territory of registration (i.e. that the company was to be registered in England and Wales [or simply 'Wales' if the company intended always to keep its registered office in Wales]);
  - the objects clause (typically this includes powers in support of the objects);
  - the limited liability clause; and
  - the statement of the members' guarantee.
- The memorandum remains effective and is now to be treated as part of the company's articles.
- Any statement of the company's objects effectively acts as a restriction on the activities that company can undertake.

# Memorandum

## Procedure

- Certain alterations can be made to the memorandum, including alterations to the company's objects and its powers. However, in the case of a charitable company, any alteration to the objects or to the winding up clause, or any relaxation of the restrictions on benefits to trustees, is a regulated alteration that requires the prior consent of the Charity Commission.
- In Scotland, the relevant legislation requires the OSCR's prior consent for similar changes.
- Some matters cannot be altered (e.g. the amount of the existing members' guarantee).

## Filing requirements

- A company's original memorandum will be on the public record at Companies House.
- Details of all subsequent alterations made to the memorandum should also be filed at Companies House.
- A change to the objects does not take effect until the relevant documents and form CC04 have been registered on the company's public record by Companies House. (A copy of the Charity Commission consent to the change must also be filed, if the company is a charity.)

## Notes

- The list of subscribers attached to the memorandum is a historic record of the initial members of the company at the date of incorporation.
- Note that CLGs are not required to notify changes amongst their members to Companies House. So to ascertain the current members of a CLG an access request should be made for an inspection of the relevant company's register of members.
- Many old companies choose to undertake a full modernisation of their memorandum and articles, moving all the surviving effective provisions of the old memorandum into one comprehensive modern set of articles. Specialist advice should be taken to ensure such changes are made effectively and in accordance with the provisions of the Companies Act 2006 and the various transitional regulations that apply to such 'old' companies.
- It is important to distinguish the memorandum that forms part of an old company's constitution under the Companies Acts 1985–1989 from the 'memorandum' that is used to notify the names of the first members (subscribers) when a new company is incorporated under the Companies Act 2006. See checklist: 'Memorandum – company incorporation'.

