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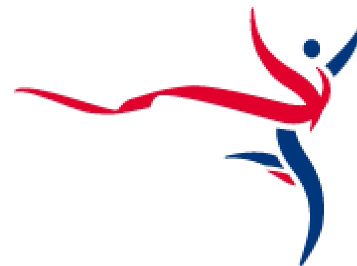
MAJOR EVENT SPV GUDIANCE



MAJOR EVENT SPV GUDIANCE

This governance guidance note is designed as a high-level overview to assist Major Event Stakeholders[1] with deciding upon which form of corporate structure they should use for their major event. It does not constitute legal advice; nor does it provide any commentary or advice on tax related issues. Major Event Stakeholders should therefore ensure that they seek independent advice from a law firm and accountancy firm experienced in major event delivery.

It is recommended this document is read in conjunction with the Major Event Governance Guidance and the Code for Sports Governance.

1. Introduction

An Special Purpose Vehicle (SPV) is a company created for a specific or limited purpose or to undertake significant business activities and projects. An SPV may be created for the purposes of delivering a single or series of events. When setting up a special purpose vehicle (SPV) for the purposes of major event delivery there are various requirements which should be considered.

The legal requirements of a company are set out in the Companies Act 2006 and further guidance is issued by Companies House[2]. Additionally, where the SPV will be receiving public funding, as will be the case for an entity hosting a major event with the financial support of UK Sport, the SPV will also need to comply with the Code for Sports Governance[3].

An SPV can be created as a subsidiary of an existing organisation (usually one of the funding partners) or as a stand-alone entity. Care needs to be taken when deciding where to 'house' the SPV, as the parent body may have certain rights over the new organisation.

Furthermore, there are multiple types of company structures which can be used as an SPV. The most appropriate will inevitably depend on the exact circumstances and structure of the major event; and, if applicable, the specific requirements of the relevant international federation which appoints the host nation or host city.

The following structures tend to best fit major events:

- a company limited by guarantee ('CLG'); and
- a company limited by shares ('CLS').

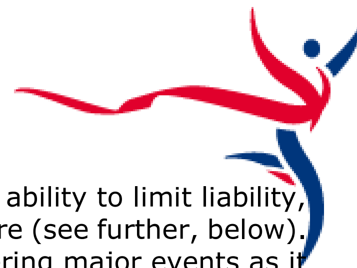
This governance guidance note therefore focuses on those structures, and covers the following:

- the difference between the CLS and CLG structure;
- how they are incorporated;
- some of the ongoing considerations; and
- the process for dissolution.

[1] Those stakeholders organising a major event with public funding

[2] https://www.gov.uk/limited-company-formation

[3] All organisations seeking public funding for sport (including those delivering major events) must meet gold standards of governance, and the Code for Sports Governance sets out the levels of transparency, accountability and financial integrity that will be required from those stakeholders. The Code for Sports Governance can be downloaded here: http://www.uksport.gov.uk/resources/governance-code



It should be noted that the key similarity between a CLG and a CLS is the ability to limit liability, albeit the manner by which it is limited varies depending on chosen structure (see further, below). This is obviously of central importance in the context of hosting and delivering major events as it enables Major Event Stakeholders to ring fence some of the risk and hive it off into a separate entity (for example it will be the SPV, rather than a specific Major Event Stakeholder) which will be responsible for event delivery, and contracting with third parties[4].

Furthermore, whichever structure you choose, the articles of association will need to be carefully considered and tailored to ensure that they are appropriate for the SPV's aims and objectives. Those articles of association will also need to be constructed with the Code for Sports Governance in mind. This is discussed in more detail, below.

2. Why choose a CLG?

A CLG structure is commonly chosen by non-profit distributing organisations and sporting membership organisations. Most National Governing Bodies (NGBs) are, for example, incorporated as CLGs. A CLG does not have a share capital, so the liability of the members is limited to the nominal guarantee given, which is usually between £1 and £10.

CLG's are reasonably easy to manage from an administrative perspective; and are flexible. A CLG's articles of association will, for example, set out the basic management and administrative structure (i.e. how members join and leave the SPV; how meetings are concluded; voting rights of the members, provisions relating to directors and officers of the CLG, etc). But a CLG's articles of association can also be tailored to the purposes and practicalities of the company's aims and objectives, which are going to focus on major event delivery.

Although it is common practice for not-for-profit organisations (which many Major Event Stakeholders are) to include non-distribution clauses in their constitution where they wish to make it clear to their members/ stakeholders/ the general public that the company's focus is not to generate profit, but instead to develop the sport, it is not a legal requirement to do so. That means that, where the Major Event Stakeholders aim to generate a surplus, a CLG's articles of association can include provisions that allow for profits to be distributed. This could enable the SPV to specifically distribute assets and/or profits/surplus (if any) to its members (which will likely be one or more of the Major Event Stakeholders) post major event delivery, or to other bodies/entities as applicable and depending on what the hosting conditions are.

It should be noted that the members' guarantee cannot be used as working capital (or as security) for the company. This means that it is not usually a suitable SPV for a company with an objective of raising third party investment, or of generating profit and then dividing the profit between members (or paying out dividends).

3. Why choose a CLS?

Just like the CLG, liability is limited, but for a CLS, rather than being limited to the value of a nominal guarantee it is limited to the price paid for the shares, and on incorporation this will usually be a nominal value.

This structure could be used for a major event SPV, and, as with the CLG, it offers flexibility.

With a CLS, where appropriate, further funds could be generated through the sale of additional shares to third party investors, albeit in the context of major events, where all of the relevant

[4] It should be noted, however, that some third parties may still require a specific stakeholder to be party to contracts.

stakeholders should be in place from the outset, it would be unusual for additional parties to be brought in, or investment sought, at a later date.

4. Key features of (and differences between) a CLG and a CLS

	Company Limited by Guarantee	Company Limited by Shares
Ownership	✔ Sole Membership; or	✔ Sole Membership; or
	✔ Shared Membership	✔ Shared Membership
Governance	✔ Companies Act 2006; and	✔ Companies Act;
	✔ Articles of Association	✔ Articles of Association; and
		✔ Shareholders' Agreement
Liability	✔ Limited to the (usually nominal) amount members guarantee	✔ Limited to the nominal value of total shareholding
Dividends	✘ None	✔ Shareholders can receive dividends
Sale of Shares	✘ None	✔ Shareholders can sell their shares for profit; and
		✔ New shares can be created and sold
Charitable Status	✔ Eligible if additional criteria are met	✘ Not eligible

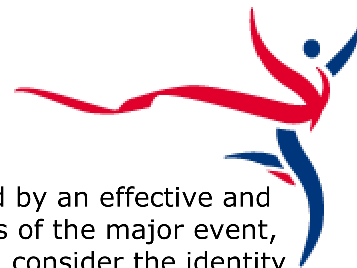
5. Incorporation

As soon as the right to host a major event is awarded the Major Event Stakeholders should begin the incorporation process, otherwise agreements relating to the major event entered into before the incorporation of the SPV will need to be novated[5] to the SPV, which can be a cumbersome process.

The SPV may be a wholly owned subsidiary of a Major Event Stakeholder (such as, for example, an NGB) or ownership may be shared between all Major Event Stakeholders. By way of an example, the SPV could be owned 50/50 by an NGB and the relevant Local Authority (or in such other % as and they may determine) or, in the case of a CLG, both the NGB and the LA could be the members. You should consider which of the Major Event Stakeholders are most appropriate to carry out which elements of control the major event delivery[6].

[5] This means that original contracting body would be replaced as a party to any contract with a third party by the SPV.

[6] it may also be appropriate to restrict the extent to which the ownership of the entity can change over the course of delivery of the major event.



It is vital that SPVs have a clear and appropriate governance structure, led by an effective and properly constituted board, which is collectively responsible for the success of the major event, and exclusivity vested with the power to lead the delivery of it. You should consider the identity of possible directors as early as possible; and then start the recruitment process as soon as the major event has been awarded (as that process can take some time). The board would usually have representatives from the Major Event Stakeholders, as well as a number of independent representatives skilled in the various facets of major event delivery[7].

The incorporation processes for a CLG and a CLS are very similar and are reasonably straightforward. Once the forms have been completed and payment made to Companies House it generally takes 1-2 days to incorporate the company. The process can usually be completed online (https://www.gov.uk/limited-company-formation/register-your-company). However, gathering the information and detail required to complete the forms and documents requires thorough thought and preparation, and you should allow plenty of time for this.

The key documents required are set out below:

Form IN01*: *Application for Registration

This document must be lodged at Companies House along with the necessary fee. The exact fee varies according to the method of incorporation chosen. An IN01 includes the following information:

- The proposed name of the company;
- The type of company (in this context, CLG or a CLS);
- Details of the company's principal business activity;
- The company's registered address;
- Details of the company director(s) and secretary (a CLG or CLS must have a minimum of one director[8]);
- A statement of guarantee (where the company is a CLG), or a statement of capital and initial shareholdings (where the company is a CLS) (essentially, these documents set out the membership of the SPV); and
- A statement of people with significant control (PSC[9]), as the company is being set up as an SPV it is likely that the one or more of the Major Event Stakeholders will have significant control.

Articles of Association

The Model Articles will automatically apply unless bespoke articles are submitted.

It is likely that the Model Articles, which are drafted with small commercial profit-making entities in mind, are not appropriate for an SPV set up to deliver a major sporting event, which will involve

[7] The Code for Sports Governance provides steer on the appropriate make up of a board and how recruitment should be approached.

[8] If necessary the SPV can be incorporated with one director and additional directors can be added at a later stage. In order to add a new director, you will need to complete (and file at Companies House) form AP01 which includes details of the director's name, address, date of birth and the date of their appointment.

[9] Most PSCs are likely to be people who hold: more than 25% of shares in the company; more than 25% of voting rights in the company; and the right to appoint or remove the majority of the board of directors

a specific set of objects. For example, the Model Articles do not apply the principles and requirements of the Code for Sports Governance, which Major Event Stakeholders will need to take into account.

You will want the articles of association to set out the rights that members of the company will have. You may consider including provisions on:

- the rights of members to transfer shares (in a CLS);
- the voting rights of members;
- the conduct of meetings;
- the distribution of profits (this would include the payment of any profit to the stakeholders after the major event has concluded);
- appointment/removal of directors.

As set out above, in the case of a CLS, and where the SPV is owned by more than one Major Event Stakeholder, you may also consider a shareholders agreement. A shareholders agreement could cover matters which are not dealt with in the articles of association. The benefit of a shareholders agreement is that it is a confidential document which is not filed at Companies House.

Discussing, negotiating and agreeing the Articles for the company between stakeholders is likely to be one of the more time consuming aspects of the set-up process.

Once these documents are filed at Companies House and the fee is paid, subject to all documents been correctly completed, a certificate of incorporation will be issued.

The first board meeting of the SPV should then be held as soon as possible. This should be used to confirm all of the details of incorporation. The SPV can then move forward with its objective of delivering the major event.

6. Ongoing Requirements

All companies are subject to a number of ongoing requirements. The key requirements are set out below.

The company must keep an up to date register of directors and secretaries. Any changes must also be filed at Companies House (this can be done online).

A register of members of the company must also be kept, along with a record of PSCs.

Records of resolutions and shareholder meetings must be kept.

Each year the company must file their financial accounts, this will include a director's report (other than where the SPV is a 'micro-entity'). A confirmation statement must also be filed annually (this states that all documents are up to date at Companies House). The precise requirements of the directors' report and accounts will depend on the size of the SPV. All of these requirements can be found online[10].

7. Dissolution

Once the major event has taken place you may consider dissolving the company.

[10] https://www.gov.uk/running-a-limited-company/company-and-accounting-records

All assets of the company should be disposed of prior to the application for strike off. In the event that any assets remain in the company at this time, they are by law transferred to the Crown.

You should also consider taking specific tax advice in relation to this process and in particular asset disposal.

The benefits of dissolving the company following the major event are that the ongoing obligations described above will cease to apply. Furthermore, the directors will no longer owe ongoing duties to the company and the liability of the SPV will be minimised[11].

The most cost-efficient way of dissolving the company is usually to apply for voluntary strike off[12]. This process is set out below:

1. Form DS01 is used to make an application for voluntary strike off, a small fee is also payable to Companies House (this is currently £10).

   It is important to note that an application cannot be made until at least three months have passed since the company last carried on business or disposed of property (and this would include the disposal of intellectual property rights). The reality is, however, it will take much longer than three months for major event financial run off to take place.

2. A copy of the application must be provided to each member, director, creditor and employee of the company.

3. Companies House will then publish a copy of the notice in the Gazette (the official public record) that the company has applied for voluntary strike off.

4. Subject to any objections, the company's name will be struck off the register two months after the date of publication of the notice in the Gazette.

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[11] Whilst it is possible for a creditor to apply to restore the company this would only occur in exceptional circumstances.

[12] An alternative method of dissolution is liquidation; however this can be much more costly as a liquidator will need to be appointed. This may be appropriate where the company holds a complicated range of assets and liabilities. In the event that a liquidator is appointed they will advertise for all creditors to submit their claims. The benefit of this is that a creditor who fails to make a claim within the set timeframe cannot then pursue their claim during the liquidation. The liabilities of a company are processed in a prescribed order on liquidation; this can be preferable where there are multiple claims.