

## **Scottish Museums Council**

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### Charitable Trust or Company limited by Guarantee? Factors to Consider -

Historically, most charities in Scotland have been set up as public or charitable trusts. Trust status provides stability and continuity, as well as clearly defined purposes and powers under which the trustees must operate. This is particularly important where land, buildings or other property are owned, or where sums of money are regularly handled. A trust can be created by a bequest under a Will, or by voluntary organisation desiring a formal status, or by a group of people who share agreed objectives.

Having said that, it is increasingly common for new charities which intend to operate services or employ staff to be set up as companies limited by guarantee with no share capital. This structure is particularly useful where the sums of money handled are substantial, and where there is a desire that those managing the charity should be subject to democratic control.

There are many similarities between a charitable trust and a company limited by guarantee. For instance, the principles of stewardship and independence are identical. However, it is generally accepted that a trust is less complex and expensive than a company limited by guarantee. By the same token, a trust is not a democratic body. Trustees hold office on a fairly permanent basis, and they usually appoint their own successors.

Professional advice should be obtained from solicitors and accountants on the setting up of a trust or a company limited by guarantee. These notes are not intended to supplement or replace such advice. Nevertheless, it may be of assistance to consider the factors before reaching a decision on the appropriate structure to adopt. If the answer to an of the following points is in the affirmative, it may suggest that the formation of a company limited by guarantee might be advantageous:

- is the budget substantial, or is it likely to become so?
- are a number of staff employed, or to be employed?
- is it intended that the charity will hold property and contract in its own name, rather than through individual trustees?
- is there a wish to maintain democratic control over the managers of the charity?
- is it desirable to protect the personal assets of those managing the charity from creditors?

Finally, it should be noted that there are a number of activities which cannot be undertaken by a charity, whether a trust or a company limited by guarantee. In particular, the charity cannot engage in trading (including retailing, catering and substantial business sponsorship). Where the charity wishes to undertake trading, it is normal and prudent to investigate the option of setting up a wholly owned subsidiary trading company which is not a charity, but will covenant any trading profits back to the parent charity.

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### Museum Constitutions

#### **Purpose**

1. A museum constitution needs to state that its purpose is to establish and maintain a public museum for the benefit of the public. Ideally, the word 'museum' should be used but the concept of a body with a long-term role to hold collections and make them available to the public should be included in the constitution.
2. In addition to this the constitution should state the following:
  - A description of the type of material to be included in the museum collection.
  - A presumption against the disposal of this material. It must be stressed that the collections should not be treated as disposable assets, used to generate income for non-museum purposes or as collateral for loans. Reference to a disposal policy is particularly important because it restricts the powers the Trustees or Directors might otherwise have to sell assets.

#### **Form**

The constitution may take a variety of forms, but frequently will be based on:

- a suitable Deed of Trust of a charitable trust, or
- a suitable Memorandum and Articles of Association of a company with charitable status limited by guarantee and no share capital.

For the purposes of this note, reference to a "trust" includes both charitable trusts and companies limited by guarantee.

#### **Powers**

1. The constitution must also describe the powers which enable the governing body to operate a museum, as opposed to any other charitable purpose.
2. It is most important that the constitution contains a clause outlining what would happen to the collections if the Trust ceased to exist.

The MGC Guidelines for Registration suggest:

*"The constitutional documents of independent museums which are registered charities should, ideally, make reference to transfer of the collection to another public museum in the event of closure or winding up. Experience that the collections owned by museums which have become bankrupt must be treated by the liquidators as assets."*

3. As an added precaution trusts may wish to consider the possibility of setting up a separate trust to hold the collections, provided that this does not conflict with the purposes of objects of the original trust.