

Briefing Note

Communities and Community
Development Trusts

Community Development Trusts are becoming an increasingly prominent part of Scotland's charity sector. They are frequently small to medium sized operations, often with charitable status, aimed at benefiting the local community which they are created to serve. They are run by the community for the community. Their main characteristics include:-

- ❖ Community ownership and management
- ❖ Independence
- ❖ Joint working arrangements with local authorities, neighbouring landowners, charities and funders
- ❖ A focus on sustainable benefit to an identifiable community, through regeneration, creation of employment opportunities, environmental benefits, cultural activities, and other social aspects of community life
- ❖ No private profits: all surpluses from activities are reinvested into the community to expand the work of the Community Development Trust and the benefit of the community more generally

At Turcan Connell, our work with communities and Community Development Trusts covers all aspects of advice including initial structures and governance arrangements, land and property issues, employment of staff, grant funding and securing obligations, relationships with neighbouring landowners and local authorities and contractual matters, including in some cases construction contracts.

What advice does a Community Development Trust need?

Structure

It is critical that a Community Development Trust can identify the legal structure which is most appropriate to it. Many Community Development Trusts are created as traditional Scottish trusts – but others are established as guarantee companies and a few are established as Scottish Charitable Incorporated Organisations (SCIOs).

The structure which is right for your Community Development Trust should be considered carefully, taking into account its intended purposes, the risks and liabilities it might face, how complex its affairs might be, the scale of its operations, how it will be funded and whether charitable status is essential to fulfilling its aims. It is also important to assess whether any aspect of the work will require a wholly-owned subsidiary trading company in addition to the main Community Development Trust itself. Our Charities Legal Team will guide you through the process of selecting the structure which is right for your trust.

Governance

Choosing the right governance model is critical to the smooth running of Community Development Trusts. Turcan Connell has wide experience of putting in place and reviewing governance arrangements and making sure that the governance model adopted is right for your body and meets any legal requirements. A failure to put in place good governance from the start can have consequences later, including the risk of regulatory inquiry and investigation.

Land and Property

Since Community Development Trusts frequently take ownership of land and buildings in their local community, or become involved in the running or sharing of land and buildings, it is important that issues such as transfers of title, leases, securities and agreements on use and occupation are put in place. Turcan Connell's Land and Property Team deals with community-based charities large and small and understands what needs to be done to ensure that questions of ownership and use of land and buildings are properly managed.

Construction Projects

Where a Community Development Trust is involved in the construction, restoration or renovation of buildings, there will often be a need for expert advice on construction law and related legal contracts. Our Business Team includes a dedicated resource which is focussed on construction law and is aimed particularly at charities and the third sector, including communities.

Employment

Community Development Trusts, like any employer, have to take care to ensure the proper regulation of staff relationships, including employment contracts and policies, managing staff relationships. We advise on all of these matters, as well as stepping in to assist when things go wrong and including, in the worst case scenarios, assistance with compromise agreements or employment tribunal cases. Since Community Development Trusts are not immune from this kind of risk, our Employment Team which is focussed entirely on charities and the third sector is ready to help with these and other employment-related problems.

Charitable status

When considering whether your Community Development Trust would benefit from charitable status, it is important to consider factors such as:-

- ❖ Tax efficiency – as a charity, a Community Development Trust will benefit from a number of tax reliefs which are not otherwise available. That would include:-
 - an exemption from income and capital gains tax or corporation tax on profits or surpluses generated;
 - relief from non-domestic rates, including 80% mandatory relief and, where available, up to 20% top-up discretionary relief;
 - the possibility of securing donations and legacies tax-efficiently under the Gift Aid scheme or with the benefit of total exemption from Inheritance Tax for those leaving legacies.

- ❖ The future uses of the Community Development Trust – a charity created with the right degree of flexibility may prove to be a successful vehicle for ongoing delivery of public benefit in your community. That could cover all kinds of charitable works, including an endowment fund for the long term benefit of the community, the ability to carry out additional projects in the community to promote urban or rural regeneration, educational and recreational projects for young people, and even the possibility of branching into the provision of social housing. Flexibility for the future may be critical to your longer term aims.

This note is intended as a brief commentary on Communities and Community Development Trusts. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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