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**Governance Code for Sport**

**Governing Documents**

Advisory

Disclaimer

Sport Ireland is making available a range of resources including guidance notes, policy documents and templates for selected areas aligned to the Governance Code for Sport which will support sport organisations, boards, management and staff in the development of relevant governance processes and procedures particular to their own organisation.

For the avoidance of doubt, the final decision on the nature, type, extent and format of approved governance policies, procedures and processes for each organisation is a matter for the board / highest governing structure of the organisation and the resources and material provided may assist the approval process.

This document is not, nor is it intended to be, a definitive statement of the law and it does not constitute legal advice.

This document is not a substitute for professional advice from an appropriately qualified source and it is recommended that sport organisations consult their governing document or obtain their own independent legal advice where necessary. Sport Ireland does not accept any responsibility or liability for any errors, inaccuracies or omissions in this document.

**Why an organisation needs governing documents?**

When an organisation is formed it chooses a legal structure and takes on a particular set of rules as to how the organisation will operate. The governing documents outline in writing that legal structure and those rules by which the organisation operates. The Board must ensure that the organisation understands and complies with its own governing documents. The Companies Act 2014 outlines the legal requirements by which organisations must operate, including the details that should be included in governing documents and how and when these must be legally registered. In the case of Local Authority LSPs, they would need to refer to that organisations governance documents before framing new ones.

All of the five principles of the Code have sub-principles that make it important to have proper governing documents in place – indeed it would not be possible to establish the organisation without governing documents. Principle 2 (Exercising control over our organisation), speaks of ‘Identifying and complying with all relevant legal and regulatory requirements’ which includes having fit-for-purpose governing documents.

All organisations – whether Type A, Type B or Type C need to have fit for purpose governing documents.

Whose responsibility is it to manage the governing documents?

For many organisations the governing documents are legacy documents that have been in place for decades. It is the ongoing responsibility of the Board to ensure they are familiar with the governing documents and the detail within them. The governing documents should be reviewed with reasonable frequency and to ensure they are still fit for purpose for a contemporary organisation including adhering to any new legal requirements. New board members should be given a set of the governing documents as part of their Board induction. Any redrafting or amending of the governing documents is the responsibility of the Board, and any changes will generally have to be passed by vote at the Annual General Meeting (AGM) of the membership (details of the mechanics of this will be contained within the documents themselves).

What do governing documents include?

Governing documents are those documents that outline how the organisation operates. They include the

* Constitution
* Memorandum and Articles of Association
* Bye-laws
* Discipline and appeals framework
* Rule Book / Competition Rules and Regulations (and sometime policy documents included as regulations)

What is the Constitution?

The constitution provides essential information about the organisation including its:

* Purpose (objects);
* Activities it can be involved in;
* Beneficiaries (who can benefit from its work);
* Geographic area it can work within;
* Powers of the Board;
* Rules for running meetings;
* Voting procedures;
* Election of the Board;
* Election of committees or any other office-bearers;
* Membership

The constitution must be formally approved.  This approval process generally requires the document to be:

* Adopted at a meeting e.g. Annual General Meeting (AGM);
* Signed by the Board members (those in office when it is adopted); and
* Dated the day of the meeting at which it was agreed.

It is essential that minutes of the meeting be recorded to show that the document has been formally agreed. The Board is then responsible for ensuring that the constitution is put into practice.

What are the Memorandum and Articles of Association?

An organisation's **articles of association** are documents which, along with the **memorandum of association**form the company's constitution, and defines the responsibilities of the Board directors, the kind of activity to be undertaken, and essential information about the organisation. The memorandum of association is the document that sets up the organisation and the articles of association set out how the organisation is run, governed and owned.

The **Articles of Association** includes the responsibilities and powers of the directors and the means by which the members exert control over the Board of directors. Articles of Association is a document containing all the rules and regulations that governs the company. The articles can be drafted as per the choice of the organisation.

The **Memorandum of Association** is a document that contains all the fundamental information which is required for the incorporation of the organisation.  The memorandum may contain the names of all the subscribers (the people who were there) at the founding point of the organisation. Generally, the memorandum of association cannot be altered and is a purely historical document, although the constitution in its entirety can be altered if required. The Companies Act of 2014 allows for the adoption of an altered memorandum and articles of association upon re-registration as a DAC, in the case where edits are desired to the memorandum of association.

What are the Bye-laws?

A bye-law is a rule or law established by an organisation to regulate itself. Bye-laws will change from organisation to organisation (and some may have none) but will likely cover topics such as (refining) the purpose of the organisation, who can be a member, how directors are elected, how meetings are conducted, what officers the organisation will have, etc.

What is the Rule Book / Competition Rules and Regulations?

A rule book outlines the sporting rules of the organization, that is the rules by which the game is played and competition is played. The Rule Book will likely include elements such as:

1. General Rules of the Sport
2. Licensing/registration of Athletes
4. Selection of Athletes to Irish international team
5. Invitation to International Events
6. Entry in International Events
7. Withdrawal from International Events
8. Conduct of Athlete at International Events
10. Disciplinary Committee
11. Disciplinary Procedure
12. Hearing procedures
13. Penalties
14. Appeals and arbitration
16. Anti-doping for Athletes

What is the discipline and appeals framework?

Disciplinary matters relating to Irish competitions will likely be covered under an organisation’s Competition Rules and Regulations. These rules and regulations may be outlined in the Constitution, or written up in a separate Rule Book. Generally, within the Competition Rules and Regulations there will be a (Games) Disciplinary Procedure. (*Note that disciplinary matters relating to European and World competitions will be covered by the European/World federation. For some sports there may be specific Provincial Branch disciplinary procedures and sanctions.)*

The discipline framework outlined in the Constitution will vary from organisation to organisation but will likely outline the appointment of a Disciplinary Inquiry Committee, and the process including timelines for that Committee to investigate the alleged breach of discipline. It will also outline the appeals procedure for any decision made by the disciplinary enquiry, and how an Appeals Panel will be constituted and timelines and obligations of that panel. It will likely also outline the appeals arbitration process, which is normally to Sport Dispute Solutions Ireland.

Drafting or amending the governing documents

Samples of draft constitutions may be obtained from specialist stationery offices selling legal supplies, accountants or solicitors. It is recommended that any changes to governing documents, once agreed and passed by the membership/at the AGM, be reviewed by a solicitor or legal counsel.

Further links and resources

[Companies Registration Office](https://www.cro.ie/)

[Irish Statute Book](http://www.irishstatutebook.ie/)

[Sport Dispute Solutions Ireland](http://sportdisputesolutions.ie/)