

LEGAL HEALTH CHECK FOR NGOS AND SOCIAL ENTERPRISES



REUTERS/ FAYAZ KABLI



ABOUT TRUSTLAW

The Thomson Reuters Foundation stands for free, independent journalism, human rights, women's empowerment, and the rule of law. We use the skills, values, and expertise of Thomson Reuters to run programmes that trigger real change and empower people around the world, including free legal assistance, journalism and media training, coverage of the world's underreported stories, and the Trust Women Conference.

TrustLaw is the Thomson Reuters Foundation's global pro bono legal programme, connecting the best law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change. We produce groundbreaking legal research, and offer innovative training courses worldwide. Through TrustLaw, over 100,000 lawyers offer their time and knowledge to help organisations achieve their social mission for free. This means NGOs and social enterprises can focus on their impact instead of spending vital resources on legal support.

TrustLaw's success is built on the generosity and commitment of the legal teams who volunteer their skills to support the NGOs and social enterprises at the frontlines of social change. By facilitating free legal assistance and fostering connections between the legal and development communities we have made a huge impact globally.

We have supported grassroots organisations to employ their first staff members, helped vulnerable women access loans to start their first businesses and brought renewable energy lighting to slums. Free legal assistance on these small projects has had a big impact on local communities working to overcome poverty and discrimination. At a global scale, we have supported legal reform activities to protect the rights of millions of domestic workers, changed legislation to support victims of violence, produced guides to protect people who experience street harassment, and crafted tools to support the prosecution of trafficking offenders.

Other TrustLaw publications can be found in our resource library on the TrustLaw homepage at trustlaw.trust.org.



DISCLAIMER

This document, and the information it contains, is provided for general informational purposes only. It has been prepared as a tool to assist NGOs and social enterprises in identifying some of their legal requirements and is based on the most frequently asked legal questions by TrustLaw members. It does not represent legal advice in respect of the laws of any jurisdiction and it does not purport to identify every legal need your organisation has, or to apply to any particular factual or legal circumstances. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with the Thomson Reuters Foundation. Thomson Reuters Foundation does not accept any responsibility for losses that may arise from reliance upon the information contained in this document or any inaccuracies therein. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction(s) when dealing with specific circumstances. The Thomson Reuters Foundation does not hold itself out as being qualified to provide legal advice in respect of any jurisdiction as a result of this document.



CONTENTS

INTRODUCTION	5
GENERAL QUESTIONS	6
DETAILED QUESTIONS	8
A. GOVERNANCE	8
B. CORPORATE STRUCTURING AND TAX	10
C. FINANCE AND REGULATORY COMPLIANCE	12
D. COMMERCIAL CONTRACTS AND REAL ESTATE	14
E. INTELLECTUAL PROPERTY	16
F. DATA PROTECTION, PRIVACY AND TECHNOLOGY	18
G. EMPLOYMENT	20
H. LEGAL RESEARCH	22

INTRODUCTION

Every year, TrustLaw receives and reviews hundreds of legal questions from our NGO and social enterprise members around the world and connects these organisations to pro bono lawyers who provide free expert advice and assistance.

Drawing on our experience, TrustLaw has developed this Legal Health Check to assist NGOs and social enterprises identify some of their operational legal needs. While it includes the questions most frequently asked by our members, it is not a complete list of legal issues. The questions are intended to be signposts to legal issues which may affect your organisation. Certain issues may not be relevant to, or important for, your organisation, particularly if your operations are small.

TOP TIPS:

- Legal matters take time to resolve. Think about what legal issues might come up in the year ahead.
- Don't wait for a problem or dispute to take action. Ensure that you are properly protected now.
- TrustLaw can connect you to pro bono lawyers all over the world – we have made connections in 175 countries.
- You can post up to 3 requests for legal advice and assistance on the TrustLaw platform at any one time.
- There is no limit on the number of requests you can make overall.

HOW TO USE THIS DOCUMENT?

This Legal Health Check will help you identify legal matters that are relevant to your organisation and issues that you might need help with. The document is divided into two main categories:

- **General Questions:** designed to help you work out which legal topics are likely to be relevant to your organisation and are therefore worth considering in more detail.
- **Detailed Questions:** designed to help you take a closer look at a legal topic and spot potential issues on which advice may be needed.

The following symbols are used in the checklist:





Yes



No



Don't Know / Not Sure

Questions answered with  or  highlight matters for which you might need to seek legal assistance. Please get in touch with your legal advisors or TrustLaw to find out how you can address these legal issues and needs.

If you have any queries relating to this Legal Health Check or would like to learn more about TrustLaw, please contact the TrustLaw team at: trustlaw@tr.com.

If you would like to apply to become a member of TrustLaw, you can complete our [application form](#) on our website at www.trust.org/trustlaw.

If you are an existing member of TrustLaw, you can [log in](#) to your TrustLaw account to submit a request for legal assistance.



GENERAL QUESTIONS

These general questions are designed to help you work out whether you need to consider a particular legal area in more detail. Further detailed questions can be found below this section.

A. GOVERNANCE

- Do you know and understand the standards of corporate governance that your organisation is required to meet?
- Are you confident that your governing documents are up-to-date and accurately reflect your social mission, activities and the way decisions are made by directors/trustees?

B. CORPORATE STRUCTURING AND TAX

- Do you want to expand your organisation or set up a new one?
- Do you want to set up a trading arm?
- Are you confident that you are using the right legal structure for your organisation?
- Are you aware of the tax benefits to which your organisation is entitled?
- Do you know whether you are required to register for VAT or to pay Corporation Tax?

C. FINANCE AND REGULATORY COMPLIANCE

- Do you fundraise?
- Do you transfer money between countries?
- Do you take out loans or raise finance through shares?
- Are you seeking investment from institutional or individual investors?
- Do you work in a highly regulated field (e.g. environmental conservation or healthcare)?

D. COMMERCIAL CONTRACTS AND REAL ESTATE

- Do you supply or distribute products or services?
 - Do you collaborate with other organisations on joint projects?
 - Do you understand your contracts and the key clauses to look out for in case there is a dispute?
 - Do you rent or lease property?
-

E. INTELLECTUAL PROPERTY

- Do you have a brand, idea, invention or written work you want to protect?
- Do you use intellectual property and do you have the right permission to use it?

F. DATA PROTECTION, PRIVACY AND TECHNOLOGY

- Do you collect, handle, store or share the personal information of individuals?
- Are your website terms and conditions up-to-date and do they include a privacy policy?
- Do your employees understand the risks involved in using social media?
- Do you work with software or app developers?

G. EMPLOYMENT

- Do you have employees, volunteers or interns and do you understand your different obligations towards them?
- Do you have a human resources policy that will help employees understand your organisation's internal policies and procedures (e.g. disciplinary procedures, entitlement to holidays).
- Do you have any concerns about your employment contracts?

H. LEGAL RESEARCH

- Do you engage in advocacy or campaigning to further social change?
-

DETAILED QUESTIONS

A. GOVERNANCE

Governance relates to the relationships between an organisation's management, its board of directors or trustees, and other stakeholders such as managers and shareholders. It is the way the leaders of an organisation direct, control and administer the organisation, in accordance with a set of rules and procedures.

Good governance is important for organisations who want to ensure that decision-making is transparent and fair. Through good governance, individuals in positions of power are held to account for their decisions and there is a structure that ensures the organisation conducts its activities in line with its social mission. It allows organisations to grow sustainably and manage risk effectively under ethical leadership.

Governance rules and procedures are usually contained in a constitution, by-laws, or articles of association. These governing documents should be kept up-to-date and should accurately reflect how the organisation is directed in practice, in accordance with applicable company and charity/non-profit laws.

	✓	X	?
Do your governing documents need to be reviewed and amended to ensure they are up-to-date and in compliance with relevant laws?			
Are the objectives/purposes stated in your governing documents consistent with your activities and goals?			
Organisations may encounter challenges in balancing financial and social goals. For example, if an organisation loses focus and strays too far into commerce, it could neglect its social mission, jeopardizing its reputation and relationships with funders. Your social mission can be locked in and protected in a number of ways by including certain clauses in your governing documents. Do you need advice and assistance to lock in your social mission, or advice on how to dispose of assets or distribute profits?			
Do your governing documents accurately reflect the powers of board members/voting members, how decisions are made, and how meetings are convened and recorded?			

	✓	X	?
<p>Your organisation's directors or key employees may have contracts or business relationships or other financial interests that may impact your organisation. A conflict of interest policy for directors can be an important document for non-profit organisations as it helps to ensure that directors act in the best interests of the organisation and not for their personal benefit.</p> <p>Do you need a conflict of interest policy for your board of directors, or do you need your existing policy to be updated?</p>			
<p>Do your governing documents include a plan for a change in circumstances within your organisation? For example, if a director/trustee/founder leaves, new directors join, or the organisation loses funding and needs to be dissolved, it can be useful to have some established procedures to follow.</p>			
<p>If your company has a shareholding, you may want to consider supplementing your governing documents with a shareholders' agreement which could, for example, be easily amended, kept confidential and include additional protections for minority shareholders.</p> <p>Do you need a shareholders' agreement, or assistance to issue or transfer shares?</p>			
<p>Do you need advice on how to maintain control and consistency in decision-making of your overseas branches or affiliates?</p>			
<p>Some organisations have affiliate organisations or subsidiaries that use or share their intellectual property, services, board members, staff or property.</p> <p>Do you need an affiliate agreement or resource sharing agreement to govern your relationship with those organisations?</p>			
<p>Some organisations choose to appoint an advisory board that provides informal, non-binding, strategic advice and expert knowledge in relation to the management of the organisation.</p> <p>Do you require advice on advisory boards or a template appointment letter for advisory board members?</p>			
<p>Do you require advice and assistance from lawyers on any other governance issues or documents?</p>			

B. CORPORATE STRUCTURING AND TAX

Lawyers can advise you on how to establish a new legal entity or how to set up an office overseas.

There is often a range of legal structures to choose from and each structure has pros and cons.

As the non-profit sector changes and innovates, new corporate forms are developed to meet new needs, leading to increasingly complicated legal structures.

It is important to choose the right legal structure for your organisation as it could impact the activities you are allowed to carry out, how many people you employ, whether and how you trade, how much tax you pay and the sources of funding available to you.

	✓	X	?
Do you need advice on available legal structure options and/or assistance to incorporate and register a new structure?			
Some organisations choose to set up a hybrid legal structure, which includes a non-profit legal entity, as well as a for-profit entity. This can have certain benefits, such as enabling the organisation to trade more or access grants or other types of finance from private investors. Do you need advice on hybrid legal structures or assistance to establish such a structure?			
If you are expanding overseas, do you need advice on the available legal structures in the new country? This advice could include information on the incorporation/registration process, timing and costs involved. Certain countries may require you to formally incorporate and/or register a legal entity, depending on your operations and activities in that country.			

	✓	X	?
<p>If you are expanding your operations, you may have considered franchising your business. Franchising means that another party can use your business model and brand to set up a business but you will have some control over the operations of the new business.</p> <p>Do you need advice on franchising or assistance to set up a franchise?</p>			
<p>Some organisations apply for non-profit, public benefit or charitable status, as achieving such status can have certain benefits such as public recognition, tax reliefs and access to funding.</p> <p>Do you need advice and assistance to apply for non-profit, public benefit or charitable status or do you need advice on which authorities to register with?</p>			
<p>Do you need assistance to apply for tax-exempt status in your country or overseas?</p>			
<p>Do you need advice on how to access available tax exemptions, concessions and other benefits for your organisation?</p>			
<p>Do you need advice on the tax reliefs that are available for your donors (individuals and corporates)?</p>			
<p>Do you need advice on general tax reporting and filing requirements?</p>			

C. FINANCE AND REGULATORY COMPLIANCE

Your financial activities may be regulated by general finance laws and regulations, as well as laws that specifically target non-profit organisations. For example, you may be subject to certain reporting and accounting requirements as a registered non-profit or charity.

Directors and trustees are generally responsible for raising funds and making investments in a way that is in the best interests of the organisation. Lawyers can advise on your reporting obligations, as well as on the legal mechanisms and risks of financial transactions. This could help you limit your risk and protect you from liability if the transaction goes wrong.

You may also need guidance from lawyers on the legal implications of different types of available finance such as grants, equity, debt, hybrid capital, crowdfunding, social impact bonds and social investment funds.

	✓	X	?
<p>Fundraising is a vital source of income for many organisations and it can be carried out in a number of ways such as through events, trading through charity shops, soliciting donations, online fundraising and street collections. How you carry out these activities may be regulated by law.</p> <p>Are you in compliance with relevant fundraising regulations in the various countries in which you fundraise and collect donations?</p>			
Do you need advice on the laws regulating the solicitation of funds on your website or social media?			
Do you need advice on the laws relating to cold-calling and marketing emails?			
Do you need advice on fundraising events such as auctions, competitions or dinners?			
Do you need a policy or advice on making grants to foreign organisations?			
Do you need advice on accepting funding from foreign donors?			
Do you need a template sponsorship or donation agreement you can enter into with sponsors and donors?			

	✓	X	?
Do you need advice on making grants or scholarships to individuals?			
Do you require advice or assistance in relation to equity or debt financing? (i.e. shares or loans). For example, lawyers can draft a template loan agreement, or convertible note which allows an investor to convert a loan into shares in an organisation at a later stage or upon the occurrence of a certain event.			
Do you need legal advice on transferring money between different countries in accordance with applicable laws?			
Crowdfunding is when money is raised from a large number of individuals, typically via an online crowdfunding website. There are different types of crowdfunding (e.g. loan-based, donation-based, equity-based) and some types are more regulated and riskier than others. Do you need to understand the risks and regulations relating to crowdfunding and the different types of crowdfunding?			
Do you need advice on your general financial reporting and accounting duties?			
Directors and trustees may have a duty to protect the organisation from fraud and financial crime. They might need advice on how to recognise fraud and financial crime risks faced by the organisation and how to implement measures to manage those risks. Do you have procedures to detect and report bribery, fraud and corruption?			
Do you require an anti-bribery/corruption policy or anti-bribery wording for your contracts or website?			
A gift or grant acceptance policy is a set of guidelines that determines the conditions under which an organisation should decline a gift or donation. This can help to protect the organisation from reputational problems if the gift is inappropriate or comes from a controversial donor. Do you need a gift recognition and acceptance policy?			

D. COMMERCIAL CONTRACTS AND REAL ESTATE

Lawyers can assist you with the drafting of template contracts that you can adapt depending on your circumstances and the parties involved. They can tailor contracts for your organisation's specific needs and services. Generic agreements from the Internet or copied from another organisation might not be suitable or offer adequate protection.

You may want to consider recording verbal agreements in writing to ensure that all parties understand their obligations and the consequences of failing to fulfil those obligations. You might also consider whether you require a Memorandum of Understanding (MoU) which is usually not binding on the other party, or a formal contract which is legally enforceable and therefore offers greater protection.

Laws change frequently so it is important to review and update your contracts regularly to ensure you are in compliance with the latest laws.

	✓	X	?
<p>If you collaborate with partners to deliver joint projects or services, you may want to consider recording how responsibilities, funding and intellectual property will be shared.</p> <p>Do you need a template collaboration agreement or joint venture agreement you can enter into with your partners?</p>			
<p>If you sell goods or services, consider whether your existing terms and conditions accurately reflect what happens in practice and whether they offer you sufficient protection (for example, if someone fails to pay or if the goods are defective).</p> <p>Do you need terms of sale, or a service agreement for customers who purchase your goods or services?</p>			
<p>Do you need template agreements that you can enter into with your suppliers, distributors or service providers?</p>			
<p>Do you trade goods and services and need to know about any restrictions or limits on trade that might apply to non-profit organisations?</p>			
<p>Do you require advice on your general procedure for making contracts with customers?</p>			

	✓	X	?
Do you need to adapt any informal, non-binding MoUs (Memorandum of Understanding) or verbal agreements into formal, binding contracts?			
Do you lease any land or buildings and do you require a template lease agreement for this?			
Do you need a lease or hire-purchase agreement to be reviewed to ensure you are adequately protected?			
Do you require an agreement for the hire or use of office or field equipment, or premises?			

E. INTELLECTUAL PROPERTY

Intellectual property rights are the protections granted to you for the intellectual property you have created. This could include, for example, trademarks, copyright, patents, design rights, and in some countries, trade secrets.

Your intellectual property may be integral to the activities and social objectives of your organisation. For example, the name and logo of your organisation may be easily recognisable and associated with a trusted service and strong reputation. When other organisations use your name or ideas, your reputation may be put at risk. Similarly, if your written work (such as training materials and research) is used without permission, it could be adapted in a way that changes its quality and meaning.

Intellectual property can be protected in different ways, for example, by formally registering it at a government intellectual property office; through license agreements; or through the terms and conditions on your website.

	✓	X	?
<p>A trade mark is a recognisable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders. You may want to consider whether other parties might use your organisation's name, logo or slogan or confuse these with those of another organisation.</p> <p>Do you need advice and assistance to register your trade marks?</p>			
<p>Do you need advice on the costs, timing and processes involved and assistance to register your trade marks in other countries, regionally or internationally?</p>			
<p>A patent gives the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time. An invention is typically a solution to a specific technological problem, which may be a product or a process. You may want to consider whether you have invented a new product that needs to be protected.</p> <p>Do you need advice on the costs, timing and processes involved in patenting and assistance to make the relevant patent application?</p>			
<p>If you allow third parties to use your trade marks, business model, educational information or written materials, you may need advice on how to protect this intellectual property.</p> <p>Do you need a license agreement for third parties who wish to use your intellectual property or advice on licensing?</p>			

	✓	X	?
<p>Copyright is a legal right that grants the creator of an original work the exclusive rights to use and distribute the work. Copyright usually exists automatically as soon as a work is created but it can also be registered in some countries.</p> <p>Do you require advice on copyright and copyright registration, or assistance to draft a copyright disclaimer for your website or written materials?</p>			
<p>Confidentiality agreements can be helpful for parties who want to share important but confidential information with another party but do not want it to be shared with anyone else. For example, such an agreement may be useful if you are working on a joint project and want to give your partner access to information about your processes or clients.</p> <p>Do you require a confidentiality agreement which you can use when you share your business information or ideas?</p>			
<p>If you have international operations, you may want advice on how to manage and structure the ownership of your intellectual property (i.e. which entity should own your intellectual property assets) and how your international entities use it. This may necessitate intercompany agreements.</p> <p>Do you require general advice on how to manage and structure your intellectual property assets?</p>			

F. DATA PROTECTION, PRIVACY AND TECHNOLOGY

If you collect, process and store individuals' personal information, you may be subject to data protection laws and regulations that are applicable in certain countries (e.g. the European Union).

Data protection laws aim to protect the privacy of individuals and to protect their information against abuse. For example, in some countries you will need the consent of the individual to store information or you may need to store it in a secure way (e.g. through online security safeguards). Through strong data protection policies and practices, you can ensure that your organisation complies with any applicable data protection laws and avoid fines for any failure to comply.

Other countries may have privacy laws that place obligations on organisations who handle certain kinds of information, for example, information relating to children or financial records.

Technological advances are increasingly driving social change and so it can be important to ensure that you have the necessary agreements in place to protect your software, website and other applications. For example, you may need agreements with website, software and app developers, or a set of terms and conditions for your website.

	✓	X	?
Do you require advice on how to collect, handle, store or share personal information and data in compliance with data protection and privacy laws?			
Do you need a data protection/privacy policy that sets out the procedures your employees need to follow to handle data properly?			
Do you need website terms and conditions? These could include Terms of Use describing how you expect your website or services to be used. Terms and conditions could also include a privacy or data protection statement describing how you handle personal information received through your website.			
Social media (e.g. Facebook, Twitter) can be valuable tools to promote your mission and to campaign for social change. However, you may want to consider the risk of employees posting damaging or libelous comments about another organisation or posting sensitive personal data. Do you require advice on how to limit your risk of libel/defamation?			

	✓	X	?
Do you need a social media policy for employees describing how they should use social media?			
Consumers are often protected by laws that prohibit misleading or false advertising or aggressive sales techniques. If you sell or advertise goods or services online, do you require advice on your obligations towards consumers?			
Do you have software, a game or an app and need advice on how to protect it?			

G. EMPLOYMENT

Employment law differentiates between workers, employees and the self-employed. The distinctions are important because workers and employees have certain rights, such as entitlement to a minimum wage and annual leave. Employees may also have additional rights, such as the right to sick pay and protection from unfair dismissal. Self-employed contractors do not have the same rights. It is therefore important to understand your obligations towards these different types of worker and to have the right kind of employment contract or independent contractor agreement in place.

It is also important for employees to understand their obligations towards their employer and the policies and procedures that apply to them. Such policies and procedures are usually included in a staff handbook or other human resources policy manual.

	✓	X	?
<p>Employees typically receive a written agreement that includes their obligations and the terms and conditions of their employment. This agreement should comply with relevant employment laws. For example, the agreement might need to include provisions on remuneration, working time and overtime, notice required to terminate, ownership of intellectual property produced during employment, disciplinary and grievance procedures, holidays, maternity/paternity leave and pension entitlement.</p> <p>Do you need a template employment agreement to be drafted, reviewed or amended?</p>			
<p>Do you need a template agreement for independent contractors/freelancers/consultants or agents?</p>			
<p>Do you need to understand your legal obligations towards your employees and what benefits they are entitled to?</p>			
<p>Do you need a template agreement or policy for volunteers?</p>			
<p>Do you need advice on the legal requirements relating to interns?</p>			
<p>Do your agreements need confidentiality provisions or restraint of trade/non-compete provisions and do you need advice on the kinds of restrictions you can make?</p>			

	✓	X	?
Do you have an employee manual or handbook? If so, does it include policies and procedures relating to age, sex, race, and disability discrimination; grievances and harassment; health and safety; fire risk; data protection and privacy; confidentiality and use of technology? Do you require any amendments to human resources policies that deal with these issues?			
Do you need advice on share schemes for employees and assistance to set up a share scheme?			
Are you required by law to offer a pension plan to employees and do you need advice on applicable pension scheme requirements and options?			
Do you need a policy and written procedures in relation to the prevention of modern slavery and the elimination of child and forced labour in your supply chains?			

H. LEGAL RESEARCH

TrustLaw legal research reports are legal resources that take an in-depth look at a legal issue in a number of countries. This may be in the form of a comparative analysis of laws in different countries, or a legal guide. These resources aim to help TrustLaw members advocate for legal reform, inform policy activities or propose amendments to laws. For examples of the kinds of research we can facilitate, please visit our resource library at trustlaw.trust.org.

If you require legal research, please provide some basic details below.
