

Guide to becoming a Charitable Incorporated Organisation

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INTRODUCTION

The Charities Act 2006 which is being brought into force in stages has introduced a new organisational structure which charities will be able to take advantage of: the Charitable Incorporated Organisation (“CIO”).

The CIO is intended to bring all the advantages of operating a charity through a company (primarily limited liability) without having to comply with the additional legal and administrative requirements to which companies are subject.

The purpose of this guide is to:

- Explain what a CIO is and how your organisation can become a CIO,
- Let you know how CIO’s operate and,
- Identify the pros and cons of becoming a CIO.

The CIO structure will not be available until the end of 2008 at the earliest. It is important, however, to start thinking about whether being a CIO could be right for you.

Furthermore, it should be noted that the Act leaves a lot of the detail as to how CIO’s will operate to be provided for by Regulations. The Government is still to issue these, with a draft expected in May.

WHAT IS A CIO?

A CIO is a charitable organisation that can hold property, make contracts and employ people in its own name. In this respect it is similar to a company and distinct from an unincorporated charity, where the trustees have to do these things on an individual basis, i.e. in their own names.

The members of the CIO have no or limited liability in the event of the winding up of the organisation. This means that, in the event of financial difficulties, creditors will not be able to go after the individuals who make up the organisation. Again, this is similar to a limited liability company and distinct from an unincorporated charity, where individual trustees personal assets are at risk.

The CIO must have one or more members, who are the ultimate owners and controllers of the organisation. If the charity does not have a wider membership and is merely run by trustees, then the trustees would be the members. Where the charity has a membership, the members remain the controllers, with the trustees appointed by the members for the stewardship of the organisation.

The CIO is governed by a constitution, which sets out the organisation’s purposes and how it operates. The Charity Commission is set to produce model governing documents in due course for the CIO.

The constitution must contain the CIO’s name, purposes, whether the principal office is in England or Wales and whether or not the members are liable to contribute on winding up (and if so, how much).

Further provisions must be included dealing with:

- Who is eligible for membership and how a person becomes a member
- The appointment of trustees and any conditions of eligibility for trustees
- The application of property on dissolution.

The awaited Regulations will contain further detail as to the content.

The constitution may be amended by resolution of the members (75% at a general meeting; unanimously otherwise). Prior written consent of the Charity Commission will be required when altering provisions in relation to:

- charitable purpose
- application of property on dissolution
- benefit to trustees (except in relation to the new remuneration provisions).

Once the amendment has been made, the trustees must send the amendment and the amended constitution to the Charity Commission; the amendment takes effect when it is registered.

The sole regulator for CIO's is the Charity Commission; there is no need to deal with Companies House.

HOW DO YOU BECOME A CIO?

How to become a CIO depends on your existing structure or whether your organisation is completely new.

Existing charitable companies (or charitable industrial and provident societies)

The company (or society) can convert into a CIO in the following way. The company must supply the Charity Commission with copies of:

- The resolution (whether special or unanimous) of the organisation that it is to be converted into a CIO
- The proposed constitution of the CIO
- The resolution of the company adopting the proposed constitution of the CIO; and
- Any other document prescribed in the yet to be published Regulations.

The legal personality of the organisation is uninterrupted; therefore it is not necessary for a separate transfer of assets.

The Charity Commission will notify Companies House (or the FSA for societies) of the change in status, at which point the company will be removed from the register (at Companies House/the FSA).

Unincorporated charities

A new CIO will need to be set up (with a new charity number), with the unincorporated association then transferring its assets to the CIO. The transfer process is simplified by the new law. Trustees can now make a single 'vesting declaration' to vest the assets of the old unincorporated charity to the new CIO, which should avoid the need for significant legal documentation in many cases. It will be possible to treat the transfer as a merger and

register this with the Charity Commission's Register of Mergers. On registration of a merger any future legacies and other assets given to the old unincorporated charity can be automatically applied to the new CIO, so there will be no need to keep the old charity on the register of charities.

New organisations

A new organisation must make an application for CIO status to the Charity Commission including the proposed constitution and any documents to be provided for in the Regulations.

To be registered the organisation must be charitable, not have a prohibited name (similar or misleading) and have a legally compatible constitution.

The CIO will become a body corporate when entered onto the register. Any property held on trust by the persons starting the CIO is automatically transferred to the CIO on registration. It is not yet clear, in advance of the Regulations, what will happen with land that is mortgaged or leasehold land that requires the landlord's consent to transfer. It should be noted that liabilities do not automatically transfer, so the instigators may need to seek a contractual indemnity from the CIO once it is registered to cover these liabilities.

THE PROS AND CONS OF BECOMING A CIO

We think it is likely that the CIO will become the vehicle of choice for many new charities. Many existing charities will also want to consider the benefits of adopting the new structure, particularly those which are running some form of business operation or are otherwise incurring significant legal liabilities. Here are the advantages and disadvantages of the CIO as compared to charitable limited companies and unincorporated organisations.

Advantages of a CIO over a charitable limited company

- A CIO is subject to regulation only by the Charity Commission, not Companies House AND the Charity Commission. Therefore the reporting, accounting and documentation regimes are simplified and less burdensome to comply with.
- The confusing distinction between charity trustees and company directors is absent for CIO's.
- The CIO may in time be recognised by the public and funders as the optimum structure for charities.

Disadvantages of a CIO compared to a charitable limited company

- Initially, CIO's may have to explain the nature of the new structure to banks and businesses who they work with.
- The new regime could have 'teething problems' as charities and the Charity Commission get used to dealing with the new structure.

Advantages of a CIO over an unincorporated organisation

- The exclusion or limiting of personal liability for members/trustees.
- The ability to hold property, make contracts and employ staff in the name of the organisation rather than in individual trustee names.
- Future potential perception by funders and the public that unincorporated organisations are not appropriate for charities with business operations and/or significant legal liabilities.

Disadvantages of a CIO compared to an unincorporated organisation

- The cost, in time and money, of a change in status may still be significant for some small organisations, but this may well be outweighed by the benefits CIO status brings.

TYPES OF ORGANISATION LIKELY TO WANT CIO STATUS

- New organisations.
- Existing unincorporated charities looking to incorporate.
- Smaller incorporated charities which find company red tape difficult to cope with.
- Larger, established charitable companies with decent administrative resources may feel that they can cope with companies regulations and that there is no particular need to change status.

CONCLUSION

We will keep you up to date with developments in relation to CIO's, particularly the exact date of their availability. If you do not already receive our charities e-bulletin, please email William Hopkin at william.hopkin@foot-ansteys.co.uk.

In the meantime, it is worth starting considering whether the CIO would be an appropriate form for your charity.

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