

Charitable Incorporated Organisation – is it the right structure for you?

Charitable Incorporated Organisations (CIOs) are a new form of structure for charities that are just becoming available. This article covers the Charitable Incorporated Organisation structure generally, the types of Charitable Incorporated Organisation available, how to establish a Charitable Incorporated Organisation, an overview of the Charity Commission's model governing documents for Charitable Incorporated Organisations and the advantages and disadvantages of adopting the structure.

The need for a Charitable Incorporated Organisation structure

Regulations giving effect to the Charitable Incorporated Organisation were approved on 3 December and come into force on 3 January. [The Charity Commission](#) is now accepting applications for registration of 'brand new' Charitable Incorporated Organisations with incomes of over £5,000, with registrations for other income thresholds staggered over the next two years, to meet expected demand.

Currently there are a range of different legal structures available for charities. These can generally be classed as incorporated or unincorporated structures. Incorporated structures include:

- companies limited by shares
- companies limited by guarantee
- community interest companies
- limited liability partnerships
- industrial and provident societies (bona fide co-operative)
- industrial and provident societies (community benefit)

- community land trusts.

Unincorporated structures that can be used

by charities include unincorporated associations, partnerships and trusts. The CIO is a new legal form for a charity crafted in response to requests from charities for a new structure which could provide some of the benefits of being a company but without some of the burdens.

Types of Charitable Incorporated Organisation available

There are two different types of CIO available. There are model constitutions for each.

Foundation Charitable Incorporated Organisations

Under this type of CIO, the voting members and charity trustees are one and the same (known as 'closed' membership). This model is ideal if the CIO is to be run by a small group of individuals (the charity trustees) who are to be responsible for making the key decisions.

Association Charitable Incorporated Organisations

This type of CIO has a wider membership than the Foundation CIO, including members who are not trustees (known as 'open' membership).

In accordance with the Charities Act 2011, the CIO constitution must be in English if the principal office is to be in England, or in English or Welsh if the principal office is in Wales. The CIO constitution must also be in a form specified by Charity Commission regulations or as near as circumstances admit.

We recommend that the Charity Commission model constitutions for both types of CIO are used and that applicants try not to deviate from these too much in order to avoid the Charity Commission rejecting the application for registration.

How to establish a Charitable Incorporated Organisation

The process required to establish a CIO will depend upon whether:

- a new charity is being formed from scratch
- an existing unincorporated charity is being incorporated into a CIO
- an existing incorporated charity is being converted into a CIO.

We will go through each of these different methods in turn below.

Establishing a CIO from scratch

Where a new charity is being started from scratch, the process is as follows:

- Prepare the constitution – using the Charity Commission model constitutions as closely as possible
- Apply to the Charity Commission for registration as a body corporate and a charity using the appropriate on line application / incorporation form and submit any ancillary documents required to assist the Charity Commission in the consideration of your application
- Upon receipt the Charity Commission will check that:
 - the proposed name is available and is not too misleading, similar to other names in existence and is not offensive
 - the CIO has exclusively charitable objects
 - the constitution covers all necessary points (i.e. covers the minimum points / issues the regulations state that it must)
- If satisfied that all of the above have been met, the Charity Commission will register the new CIO and it will come into being as both a body corporate and a charity upon registration.

Incorporation of an existing unincorporated association into a CIO

Where an unincorporated association already exists but it needs to be incorporated into a CIO there is no process set out in the legislation. The process will be as follows:

- Form a new CIO as detailed above (establishing a CIO from scratch)
- Transfer all assets, undertakings, non-endowed property and liabilities of the original charity to the newly established CIO
- A vesting declaration under section 310 of the Charities Act 2011 will be required for the transfer of property
- In relation to the transfer of assets, and contracts the original charity will need to consider how it wishes to deal with these – e.g. by assignment / novation / asset transfer agreement. This may depend on what the charity's constitution says
- Also consider how to deal with the transfer of staff and pensions – if TUPE applies then a consultation will need to take place
- Dissolve the trust or unincorporated association in accordance with the provisions contained within its governing document
- Apply to the Charity Commission to have the unincorporated charity removed from the register of charities
- You will also need to:
 - notify HMRC to obtain a new VAT registration number
 - enrol the new organisation for gift aid
 - notify the organisation's bank, creditors, funders and other stakeholders in relation to the change in structure.

Conversions of companies / industrial and provident societies to CIO status

The final regulations relating to the conversion of incorporated charities to CIOs is still awaited and charitable companies are not likely to be able to convert to CIOs until 2014. Industrial and provident societies can also not convert to CIOs yet, as they are currently exempt charities and as such are not able to become a CIO. However, there are provisions in the Charities Act 2011 that set out how the process will work once legislation has been passed to remove their exempt status (again likely to be 2014).

Once the necessary regulations have been passed, the process to convert a charitable company or an IPS to a CIO will be as follows:

- prepare a new constitution
- pass a resolution to approve the conversion and adopt the new constitution
- apply to the Charity Commission for registration
- the Charity Commission will notify and consult with the register of companies / Financial Services Authority (FSA), check
- the organisation's charitable status along with the organisation's proposed constitution and name
- if conversion is approved then the Charity Commission will grant a provisional registration and notify Companies House / FSA
- Companies House / FSA will cancel registration of the original charity and upon such cancellation the charity will cease to be a company / industrial and provident society and become a CIO
- the CIO will not be a new corporate body and so its existing business relationships will not be affected.

Is a CIO right for you?

To decide whether the CIO structure is the right structure for you, you should consider the following points:

Advantages

- There will be no dual regulation. CIOs will only need to be registered with the Charity Commission, will come into being once registered with the Charity Commission, will be regulated by the Charity Commission and subject to charity law
- Trustees of CIOs will benefit from limited liability. This means that their liability in relation to the organisation is limited to the amount they have invested in the CIO / have guaranteed upon the winding up of the organisation. As the CIO is a separate legal entity it will enter into contracts, hold property and employ staff itself. Consequently, it is the organisation rather than the trustees that will be liable for any liabilities arising from such arrangements
- There is no minimum registration threshold that will apply in relation to the registration of such organisations at the Charity Commission (unlike the current rules for registration of charities which must have a minimum of £5k income before they can apply)
- Every CIO will have a registered charity number. This assists an organisation with fundraising / donations and providing the public with confidence that the charity is appropriately regulated
- The structure is specifically designed for charities
- No fines will apply for administrative errors

- CIOs with income of £250,000 or over can produce simpler receipt and payment accounts to the Charity Commission.

Disadvantages

- Trustees will have management responsibility and be liable for breaches of trust and for fraudulent / wrongful trading
- The structure is not suitable for all types of charity – e.g. exempt charities cannot convert to CIO status
- In practice CIOs may be subject to many of the same regulations as companies
- The structure is new, untried and untested which may throw up some teething problems for the first few CIOs established.
- The structure is unfamiliar to all, in particular lenders, funders and donors
- The legislation is not all in one place, making it more difficult to make sure the structure is set up and run in accordance with the law
- CIOs only come into being when registered at the Charity Commission. If registration is lost then the charity will fold (unlike companies limited by guarantee which may lose their charitable status but can continue as a company registered with Companies House)
- Delay in getting started – the time it takes to obtain registration is approximately a minimum of 40 working days
- CIOs are required to register / file returns irrespective of size
- The structure does not benefit from a register of charges and therefore cannot offer security for borrowing. Floating charges can be offered and in practice can secure charges but there will be no register of this. The Charity Commission does not have the resources to establish a register. This will inevitably create concerns / issues for lenders.

Decided whether a CIO is for you?

After reading this article you may hopefully have a clearer idea as to whether the new charity structure is for you; or the information may have sparked further questions you require answers to. The CIO is a structure which is now available for new charities with annual income over £5,000 and will become available to companies wishing to convert to CIOs from 2014. Legal advice is key in terms of advice regarding the establishment / conversion to a CIO, the drafting of necessary legal documentation and completion of the application for registration to the Charity Commission. If you would like to establish / convert to a CIO or require further advice on this then please do not hesitate to contact one of our charity team.

Useful link: [Charity Commission guidance on CIOs.](#)