

The Charitable Incorporated Organisation

Rebecca Fry | April 2013

The long-anticipated charitable incorporated organisation (CIO) – a new corporate form designed exclusively for and available only to charities – is now available.

With the wait finally over, now is the time to consider whether the CIO is the right legal structure for your charity.

What is a CIO?

The CIO is a new corporate form designed to offer charities the benefits of incorporation, but without many of the burdens imposed by company law. It provides an alternative to structures such as the company limited by guarantee, the trust and the unincorporated association, none of which were created with charities in mind.

Key advantages

- Limited liability protection

Members and trustees of CIOs are generally safeguarded from the financial liabilities that the CIO incurs, which is not the case for unincorporated charities like a traditional trust.

- Independent legal personality

As corporate bodies, CIOs are able to hold property and enter into contracts in their own name rather than in the name of individual trustees. Trustees of CIOs will not therefore be liable on contracts and there will be no need to transfer title to charity property or novate or assign contracts each time a trustee retires or is appointed.

- Single registration and regulation

CIOs are registered with and regulated by the Charity Commission but not Companies House, thereby avoiding the dual regulation imposed on charitable companies. This is likely to lead to administrative time and cost savings, not least because CIOs need only file information (such as the annual return) with one regulator.

- Simplified reporting and accounting

CIOs are subject to the accounting and reporting requirements set out in the Charities Act 2011, meaning that those with a gross annual income of £250,000 or less can choose to submit receipts and payments accounts. This is less onerous than the company law accounting regime.

- No charges for filing information or late filing fees

Unlike Companies House, the Charity Commission does not currently charge for registration or the filing of information; nor does it levy late filing fees.

Key disadvantages

- Uncertainty

As the legal framework for CIOs is new, it may take some time for charities to acquaint themselves with the various requirements. Charities may also find that third parties (such as funders and lenders) are not yet familiar with the CIO structure.

- No register of charges over CIO property

Information about registrable charges over and interests in land owned by CIOs will be available from the Land Registry in the normal way, but there are no plans to maintain a searchable register of charges over CIO assets comparable to that maintained for companies by Companies House. This may discourage some lenders.

- Same regulation and administration as companies in some areas

Although CIOs are not generally subject to company law, the same rules do apply in some circumstances. CIOs are subject to the same insolvency and dissolution procedures as companies (although there is an additional bespoke voluntary dissolution procedure for CIOs). In addition, the company director disqualification rules apply to CIO trustees. Those familiar with company law will also note that many of the rules governing CIO administration are very similar to those that apply to charitable companies. For example, like charitable companies, CIOs are required to maintain up-to-date registers of members and trustees.

- Delay

The Charity Commission will generally take up to 40 working days to process applications to register CIOs, which is significantly longer than the same day incorporation service offered by Companies House. However, the Charity Commission has said that it should be able to process some applications more quickly, for example, where a CIO is being established to respond to a disaster or other emergency.

Is the CIO suitable for your charity?

The CIO offers the key benefits of an independent legal personality and limited liability, and is likely to be cheaper and easier to operate than a company limited by guarantee. As a result, we expect it will prove to be an attractive option for some new charities and unincorporated charities looking to incorporate, particularly small and medium-sized charities that own property, employ staff and/or enter into contracts on a regular basis.

Running a charity invariably gives rise to risks, and charities are likely to find it easier to recruit and retain good trustees if they can offer limited liability protection. Although CIOs are required to comply with slightly more onerous administrative requirements than most unincorporated charities, this disadvantage is likely to be outweighed for all but the smallest charities by the benefits of having a corporate status.

The lack of a searchable register of charges over CIO property is likely to mean that the company limited by guarantee will continue to be a more suitable structure for large charities, particularly those wishing to enter into secured borrowing arrangements or raise funds by issuing debentures.

However, the CIO may prove attractive to large charities or non-charitable social enterprises looking to establish a subsidiary charity to run their fundraising operations (for charitable projects only) or to carry out certain charitable activities. Like companies limited by guarantee, CIOs have both members and trustees making them suited to a parent-subsiary structure.

When can your charity become a CIO?

The CIO has already proved to be a popular legal form. The Charity Commission reported that it received 15 applications in the opening week for CIO applications and by mid-March 2013 it had registered 56 CIOs.

To deal with the demand, the Charity Commission is accepting applications to register CIOs in stages. At present, only brand new charities with an annual income of £5,000 or more and existing unincorporated charities with an annual income of more than £250,000 can apply to register.

Applications from smaller unincorporated charities looking to convert and brand new charities with an annual income of less than £5,000 will be phased, as follows:

- from May 2013 – unincorporated charities with an annual income between £100,000 and £250,000;
- from July 2013 – unincorporated charities with an annual income between £25,000 and £100,000;
- from October 2013 – unincorporated charities with an annual income between £5,000 and £25,000; and
- from January 2014 – unincorporated charities and entirely new charities with an annual income of less than £5,000.

This timetable is indicative only, and may change depending on the volume of CIO applications received by the Commission.

It is not yet clear when existing charitable companies will be able to convert. The Charities Act 2011 contains provisions enabling existing charitable companies to "re-register" as CIOs, but it is unlikely that these will be brought into force before 2014.

More information about setting up and running a CIO is available on the Charity Commission website at:

http://www.charity-commission.gov.uk/FAQS/Registering_a_charity/FAQs_about_CIOs/

If you require further information on anything covered in this briefing please contact Rebecca Fry (rebecca.fry@farrer.co.uk; +44 (0)20 3375 7166) or your usual contact at the firm on +44 (0)20 3375 7000.

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