

CHARITABLE INCORPORATED ORGANISATIONS: WHAT ARE THEY AND WILL THEY TAKE OFF ?

BACKGROUND

When a charity is incorporated it will typically be a company limited by guarantee, which means the trustees must comply with regulations imposed by both company law and the Charity Commission. Charities are doubly burdened and it has long been considered a practical step forward to create a new legal structure specifically for charities. In response Charitable Incorporated Organisations (CIOs) were introduced under the Charities Act 2006 and are anticipated to come into form in 2011 (though it is not clear whether the legislation will be phased in piecemeal and no commencement date has yet been made). CIOs are already overdue given Parliament did not find time in the 2009-2010 session to introduce the Act.

Why is a CIO different from a company limited by guarantee?

The Charity Commission states the following aspects as unique to CIOs:

- A CIO only comes into existence once it is registered with the Commission;
- There is no minimum income registration threshold for CIOs;
- All CIOs will have to submit accounts and annual returns to the Commission regardless of income; and
- CIOs will have to comply with the other additional responsibilities outlined in the Charities Act 2006 and the CIO Regulations.

But perhaps the most significant distinction is that the organisation will be constituted, registered and regulated solely by the Charity Commission, will not report to Companies House and will be released from duties under the Companies Act 2006. This means filing only one annual report and one set of accounts.

In what way is it the same?

As with companies limited by guarantee, CIOs retain the benefits of body corporate status, including:

- the limited liability of trustees
 - Note that the CIO's constitution must state whether or not its members are liable to contribute to the company's assets if the company is wound up, together with details of the extent of such contribution;

- the convenience of having a legal entity under which business can operate (for example deeds and documents will be executed in the company's name rather than in the names of individual trustees).

Who can incorporate as a CIO?

The CIO structure is open to all new charities and unincorporated associations. The Charities Act 2006 also provides a conversion process for organisations currently incorporated as a company limited by guarantee.

How do we register?

The registration process will depend on what kind of organisation you are but, generally, you will register with the Charity Commission rather than Companies House and should supply the following with any application:-

- (1) the organisation's proposed constitution;
- (2) any documents required by regulations made by the Minister; and
- (3) any other documents the Commission may request.

What happens after incorporation as a CIO?

Similar to a standard incorporation process, the CIO will become incorporated in accordance with the information supplied to the Charity Commission. Therefore the CIO's members will be those named in the application documentation although, whereas the trust property was previously vested in the trustees, it will now be vested in the CIO.

What do the trustees need to do after incorporation as a CIO?

The trustees must continue to observe their duties, for example acting in good faith and not benefiting personally from arrangements. In terms of practicalities, the Charity Commission gives the following advice:-

'As the CIO will be a new legal entity it will have a new registered charity number and you will need to inform banks, funders and suppliers of the transfer. You will need to ensure that any existing contracts are assigned to the CIO.'

Will they take off?

Charities should not take any steps until Parliament take the initiative to set a commencement date for the Act (based on the assumption they actually do so!). There is nonetheless a growing interest in CIOs amongst incorporated and non-incorporated charities. The chief selling point of CIOs is the removal of the shackles of dual-registration and the circumvention of Companies House whilst simultaneously enjoying the benefits of incorporation, such as limited liability. The ears of charitable trustees will be pricking. Trustees should not however underestimate the administrative load. If you are a trustee of an unincorporated organisation considering CIO status do bear in mind that whilst the administrative

burden will be less than with a company limited by guarantee, a CIO is still an incorporated organisation with reporting requirements and duties in excess of those under a simple trust structure. Unincorporated charities will therefore need to consider their liabilities and weigh them against this administrative burden. Medium and upwards sized charities will certainly need to consider the benefits.

The outline provided in this article is merely an overview and conditional but before considering any application for CIO status it is vital that trustees or directors convene a meeting to discuss the charities needs and purposes before taking good legal advice.

Disclaimer

This Article does not seek to replicate the arguments or views of any one body and in particular it represents the views of the authors at LBMW rather than those of the ISC. For the legal arguments being advanced by the ISC please see the Charity Tribunal website (www.charity.tribunals.gov.uk) and in particular their Grounds of Claim

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