Introduction

The Charitable Incorporated Organisation (CIO) is a legal form that is designed specifically for charities.

The key features of a CIO are set out in another of our information sheets, *Choosing legal structures*, which you should read if you are looking to compare the main types of legal structure available to voluntary organisations.

This information sheet will offer more detailed guidance on the CIO, including the differences between the two CIO models that can be used, the advantages and disadvantages of this structure, and how you can look to register a CIO if you decide it is the best structure for your organisation.

Background

For a long time registered charities had to register not only with the Charity Commission, but also with Companies House as a company limited by guarantee if they wished to benefit from charitable status *and* limit the personal liability of their trustees and members.

The Charities Act 2006 introduced the statutory framework for CIOs, but there were some delays which meant that CIOs weren't actually until December 2012. The CIO is intended to provide the benefits of incorporation for registered charities, but with a simpler legal framework that is regulated singly by the Charity Commission.

So what is a CIO?

A CIO:

- is an incorporated form of charity which is not a company
- only has to register with the Charity Commission and not Companies House
- is only created once it is registered by the Charity Commission
- can enter into contracts in its own right, and its trustees will normally have limited or no liability for the debts of the CIO.

Phased implementation

When the CIO was first made available, a phased implementation took place whereby the Charity Commission only accepted applications for CIO registration from specific types of organisations at certain times. That period of phased implementation ran from December 2012 to January 2014, during which time brand new charities and existing unincorporated organisations were able to apply to register as CIOs.

A date has not yet been confirmed for when existing incorporated organisations will be able to apply for conversion to a CIO, as further regulations need to be created by the Office for Civil Society first.

Two models

There are two models available for a CIO:

1. the foundation model, which is for charities whose only voting members will be the charity trustees; and

2. the association model, which is for charities that will have a wider membership, including voting members other than the trustees.

In practice a CIO using the 'foundation' model will be like an incorporated charitable trust, run by a small group of people (the charity trustees) who make all of the key decisions. Charity trustees may be appointed for an unlimited time, and they will probably appoint new charity trustees.

A CIO using the 'association' model will have a wider voting membership who must make certain decisions (such as amending the constitution), will usually appoint some or all of the charity trustees (who will serve for fixed terms), and may be involved in the work of the CIO.

There are not two different CIO structures. A CIO with the 'foundation' model could change to the 'association' model if it wanted a wider voting membership: this could also happen the other way around, but members who were not trustees would then be giving up their membership. Some of the changes would need the Charity Commission's approval.

You can access model constitutions for the foundation and association models on the Charity Commission's website.

What are the advantages?

The main advantages of becoming a CIO are as follows:

- Because it is an incorporated structure, the organisation will exist as a legal entity in its own right separate to the board of trustees. This means that it can enter in to

contracts and hold property in the name of the organisation, rather than in the name of specific trustees.

- The trustees benefit from the protection of limited liability, provided they have acted properly. For further details on limited liability please read another of our information sheets titled *Liability of trustees and governing body members*.
- CIOs are only required to register with the Charity Commission and are not regulated by Companies House as charitable companies are, therefore avoiding dual registration and the commitments that come with that. This should make for simpler administration processes.
- There is no minimum registration threshold when applying to register as a CIO, as there usually is when looking to register a charity (charities are normally required to show that they have an annual income of £5,000 or more when submitting an application to register with the Charity Commission). Therefore, a CIO is allocated a registered charity number as soon as it is created, which can help with providing the public or potential funders with confidence that charity is being regulated appropriately.
- There will be no charge for filing documents with the Charity Commission as there is when charitable companies have to file documents with Companies House.
- The CIO can have vested in it any permanent endowment held by an unincorporated charity. This can be done by a simple vesting declaration.

And the disadvantages?

The main disadvantages of this structure are as follows:

- The registration of a CIO with the Charity Commission will take longer than it takes to register a charitable company with Companies House's via their same day registration. This may mean that organisations requiring a very short set up time (for example, appeals created in response to a crisis) are not able to be registered as CIOs.
- Exempt charities cannot register as CIOs, because all CIOs must register with the Charity Commission. You can find further information about what constitutes an exempt charity on the Charity Commission's website.
- As with the point above, if an organisation is registered as a CIO it will automatically become a registered charity. Therefore, if the CIO stops being charitable (i.e. its purposes no longer satisfy the Charity Commission's public benefit test) the organisation will cease to exist. This is in contrast to other legal structures such as companies limited by guarantee and unincorporated associations, which can continue to exist with some operational amendments if they no longer wish to continue to be a charitable organisation.
- While some may think it is beneficial to be able to register with the Charity Commission as soon as the organisation is set up (because there is no financial threshold for registration), others may feel that those benefits are outweighed by the ongoing administrative requirements that come with registration, especially if the organisation is only small.
- While CIOs are able to register a mortgage on land at the Land Registry, the Charity Commission does not keep a searchable register of charges as Companies

House do, so there is no register of any debentures issued by CIOs. Banks often ask for these kinds of security for lending to organisation, therefore the absence of such a register may result in CIOs being less able to access some lending services.

- The CIO structure is relatively, new so some lenders or funders may be unfamiliar with it.

Is the CIO right for you?

The Charity Commission has stated that it believes the CIO is suitable for most small to medium sized organisations which employ staff and/or enter into contracts.

If your charity is likely to want to issue debentures, a company limited by guarantee may be a better option for you. And while establishing and running a CIO is (in theory at least) simpler than establishing a charitable company, it will not be as straightforward as running an unincorporated association or a charitable trust, so one of those structures may be more suitable for you (although they will offer less protection).

Ultimately you will need to consider the different legal structures available and assess which of them would suit your needs best. Further information on different legal structures can be found in another of our information sheets, titled *Choosing legal structures*, as well as in the Charity Commission's guidance on the structures that are available for charities to use.

Registering as a CIO

If, on reading the information above and in the referenced documents, you have decided that the CIO is the right structure for your organisation you will now need to look to register as a CIO with the Charity Commission.
You can do that by following the Charity Commission's online registration process. You will also need to create a constitution for your CIO, choosing between the foundation model and the association model, and you can use the free model constitutions mentioned above which are available from the Charity Commission.

The Charities Act 2011 doesn't require you to use a particular wording in your constitution, but the wording in the Commission's models has been carefully considered and informed by experts in the charity sector so it is likely to make the registration process quicker if you use one of them.

Running a CIO

As with almost any legal structure, there are various requirements in place for running a CIO.

CIOs must send their accounts and their annual report to the Charity Commission within 10 months of the end of their financial year, regardless of their level of income. Both must be sent to the Commission in electronic format, rather than by post.

CIOs with a gross annual income of £250,000 or less can choose to prepare receipts and payments accounts, but CIOs with a gross annual income over £250,000 must prepare accruals accounts. There is nothing to stop a CIO with a gross annual income of less than £250,000 from preparing accruals accounts if it wishes to do so though, or if a funder or lender asks it to prepare accrual accounts.

Anyone over the age of 16 can be a trustee of a CIO except those who:

- have an unspent conviction involving deception or dishonesty
- are an undischarged bankrupt
- have previously been removed from trusteeship of a charity by a court or the Charity Commission
- are subject to a disqualification order under the Company Directors Disqualification Act 1986.

A CIO can also have one or more corporate bodies as trustee(s). CIOs are required to keep a register of trustees, which is available for public inspection, as well as a register of members.

Further advice

Charity Commission for England & Wales
Tel: 0845 300 0218
- *Charity types: how to choose a structure (CC22a)*
- *Model governing documents*
- *How to register your charity (CC21b)*
- *Changing your charity structure*

https://www.gov.uk/government/organisations/charity-commission

Wales Council for Voluntary Action
Tel: 0800 2888 329

- *Choosing legal structures*
- *Liability of trustees and governing body members*

www.wcva.org.uk

Disclaimer
The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

For further information contact

Voluntary Action Merthyr Tydfil
Voluntary Action Centre, 89/90 High Street, Merthyr Tydfil, CF47 8UH
Registered Charity: *1060242*

Tel: 01685 353900   enquiries@vamt.net
Fax: 01685 353909   www.vamt.net

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Tel: 0300 111 0124
www.wcva.org.uk