

## Charitable Incorporated Organisations

### What is a CIO?

A Charitable Incorporated Organisation (CIO) is a new legal structure for charities. A CIO is an incorporated form of charity but is not a company. The CIO is therefore registered only with the Charity Commission and not Companies House. The new structure was introduced in the Charities Act 2006 as a way of allowing charities to enjoy the benefits of incorporation without the dual burden of registering with and reporting to both the Charity Commission and Companies House.

### When will they be available?

The introduction of CIOs as a charitable structure has been long awaited and has suffered considerable delays. The Charity Commission began registering brand new charities with an annual income of over £5,000 as CIOs on 2 January 2013. The Charity Commission plans to stage a phased implementation process in order to manage demand, the timetable for which is set out below (although this is not guaranteed):

From 2 January 2013	New charities with an annual income of over £5,000.
From 1 March 2013	Existing unincorporated charities with an annual income of over £250,000
From 1 May 2013	Existing unincorporated charities with an annual income of between £100,000 to £250,000
From 1 July 2013	Existing unincorporated charities with an annual income of between £25,000 and £100,000.
From 1 October 2013	Existing unincorporated charities with an annual income of between £5,000 and £25,000.
From 1 January 2014	Existing unincorporated charities with an annual income of less than £5,000 and brand new charities with an annual income under £5,000.

## **Setting up and registering a CIO**

In order to become a CIO an existing unincorporated organisation will need to set up a CIO and register it with the Charity Commission, transfer the charity's assets and undertaking into the CIO and then dissolve the unincorporated organisation in accordance with the provisions contained within its governing document.

The current legislation governing CIOs does not make any provision for the conversion of existing incorporated bodies such as charitable companies limited by guarantee, CICs and Industrial and Provident Societies, but further regulations dealing with this process are expected in 2014.

Applications can be made online on the Charity Commission's website. The Commission has produced model constitutions for CIOs and state that any constitution must be "as near to that form as the circumstances admit", although it is expected that the Commission will allow a fair amount of flexibility.

### **Key advantages of setting up a CIO:**

- The most obvious advantage is that CIOs will enjoy all the benefits of limited liability without being subject to company law or dual reporting to both the Charity Commission and Companies House. CIOs will only have to submit one annual return.
- Unlike the members of a charitable company, there is a duty of members of a CIO to act in the charity's best interest, rather than just the charity's trustees. Members of a CIO have a statutory duty under the Charities Act 2011 to exercise their powers in good faith and in a way that is most likely to promote and further the purposes of the CIO. This may be helpful in promoting the smooth running of the charity and ensuring that all members are acting in its best interests. In addition, a CIO's register of members does not need to be open to the public, although trustees' names will be available to view on the Commission's website.
- Members of CIOs have fewer rights than members of charitable companies. For example, they have no statutory right to require a general meeting to be called, demand a poll to be taken at a general meeting, appoint a proxy, or remove company directors (trustees). This could also be seen as a disadvantage, although these members' rights can be included in the CIO's constitution should the organisation wish to do so.
- There is a simplified merger process for CIOs under the Charities Act 2011, which allows two or more CIOs to amalgamate.

### **Key disadvantages of setting up a CIO:**

- CIOs are untried and untested. There is currently a lack of familiarity with the structure, which may make funders reluctant to make grants to a CIO.

- There are also concerns about the speed of setting up a CIO. A charitable company can be set up in a matter of days and start entering into contracts etc. even if it is not yet registered with the Charity Commission. Conversely, a CIO does not come into existence until it has been registered. It is unclear at this stage how long the registration process will take, especially given the Commission's recent funding cuts.
- It could potentially be more difficult to make constitutional amendments under the CIO model. As with a company, amendments to a CIO's constitution can be made by approval of 75% of the members voting at a general meeting. However, if a CIO wishes to make constitutional amendments by written resolution, approval of 100% of the members is required rather than 75%.
- Amendments to a CIO's constitution do not take effect until they have been registered with the Charity Commission, rather than when the resolution is passed (or when they have been filed at Companies House in the case of a change to a company's objects, which only takes a few days).
- CIOs will not have to keep a register of charges and cannot register such charges with the Charity Commission, as companies do at Companies House. This could potentially make it more difficult for CIOs to give security when borrowing.

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