

The CIO – one year on

Charitable Incorporated Organisations ('CIOs') were launched to much fanfare in January 2013.



Sarah Payne
Solicitor
T: 020 7551 7653
s.payne@bwbllp.com

Sarah advises a wide range of not-for-profit organisations and businesses with social purposes, on legal and commercial issues including corporate structure, governance, fundraising and campaigning.



Barbara Eze
Legal Administrator
T: 020 7551 7787
b.eze@bwbllp.com

Barbara is a legal administrator in the Charity and Social Enterprise team at BWB.

Sarah Payne and Barbara Eze look at how the new legal form has been received.

There are now more than 1,300 CIOs registered with the Charity Commission and the number is rising. Since January 2014, applying to establish a CIO has been open to all organisations, regardless of their income level.

While the CIO has given many charities a simpler way to enjoy the benefits of incorporation, there continue to be some areas of uncertainty.

What is a CIO?

A CIO is the only bespoke incorporated legal form for charities, and was designed with charities in mind. Being incorporated means that the charity will have legal personality and can enter into legal relationships in its own name. In most situations, it is the incorporated charity itself, rather than the members or trustees, which is responsible for the charity's debts or for any other liabilities that might arise from its legal relationships.

Prior to the launch of the CIO, the most popular incorporated legal form available to charities was the company limited by guarantee ('CLG') – a standard legal form (a company) that can be adapted for charities. Both CIOs and CLGs have a two-tier structure of trustees and members.

To form a CIO, one application to the Charity Commission results in both incorporation and charity registration. In comparison, a CLG is first incorporated

“In our experience, the amount of time and resource that is required to administer a CLG in comparison with a CIO is, in many cases, not significant enough to outweigh some of the disadvantages of the CIO for larger and more complex charities”

with Companies House and then registered with the Charity Commission once it can demonstrate that it has an income of over £5,000. There is now no minimum income requirement for setting up a CIO, which makes it particularly attractive for low-income organisations.

Administration of a CIO in comparison with a CLG

For CIOs, there is just a single regulator – the Charity Commission – and CIOs only have to comply with the Charities Acts and CIO regulations. In comparison, a CLG has two regulators – the Charity Commission and Companies House – and CLGs also have to comply with company law. This gives the CIO an important advantage for small charities that are concerned about dealing with Companies House. However, in our experience, the amount of time and resource that is required to administer a CLG in comparison with a CIO is, in many cases, not significant enough to outweigh some of the disadvantages of the CIO for larger and more complex charities.

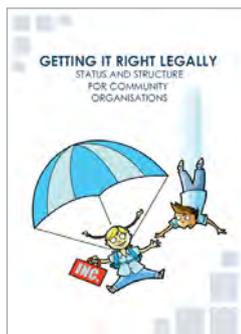
Membership issues

The rules on proxy voting and electronic communications with members are much less rigid for CIOs, which may make the CIO a more attractive option than the CLG for charities with large memberships.

Lending

There has been a concern about the absence of a Register of Charges for CIOs. A bank setting up an overdraft facility for a CLG can register a charge at Companies House, which gives the lender some protection, since anyone dealing with the CLG can obtain information about the charge. The fact that there is no Register of Charges for CIOs (and no personal liability on a loan for CIO trustees) may influence banks and other lenders not to make certain types of lending available to CIOs. It is worth noting, though, that this concern is unlikely to apply to loans to fund purchases of property because the lender can register a charge at the Land Registry.

Getting It Right Legally



Getting It Right Legally – the guide to legal status and structure for community organisations written by BWB and the University of Gloucestershire – has been updated to include information about the CIO and is available from www.playwork.co.uk/information-resources/publications/getting-it-right-legally.aspx

Banking

On a more positive note, banks seem to be getting better at acknowledging the existence of the CIO form. Further, some banks are willing to allow an unincorporated organisation converting to a CIO to keep its existing bank account – which would resolve one practical problem of conversion to a CIO for those unincorporated organisations that benefit from a large number of donations by standing order.

Uncertainty on a winding up

Perhaps not surprisingly, given how new the CIO is, there is some uncertainty about how it will operate in practice in some scenarios, such as on a winding up, and in an insolvency situation.

For example, while there is a well-established procedure for creditors to restore a company that has been struck off the public register of companies, it is not clear that creditors will, in all cases, be able to do the same for a CIO that has been removed from the Register of Charities. As one way to address this, BWB has asked the Charity Commission to have a dedicated page on its website that lists proposed CIO dissolutions – so that third parties can monitor proposed dissolutions and intervene pre-dissolution if necessary – and although this has been confirmed in principle, we don't know yet when this will be up and running.

Over time there will be more clarity about the process for winding up a CIO, but in the meantime this remains a grey area.

Conversion from a CLG to a CIO

One of the advantages of the CLG legal form over the CIO is that it should soon be possible to convert from a CLG to a CIO: indications are that the proposed regime should be available later in the year, and that it will apply to community interest companies as well as charitable CLGs. By contrast, there are currently no firm proposals to allow a CIO to convert to a CLG.

Conclusion

The CIO is an attractive option for some charities, particularly those seeking to simplify their arrangements or obtain limited liability status for the first time, which are unlikely to want to borrow for non-property purposes. However, there are still uncertainties surrounding this new legal form and only time will tell how these potential issues will be resolved.

An introduction to CIOs in practice

BWB and the University of Gloucestershire have teamed up to offer this useful and interactive information session for community organisations that can be tailored specifically for your audience's needs.

Jointly facilitated by a legal expert from BWB and Playwork Partnerships at the University of Gloucestershire, we are currently able to offer this session at just £99 per head.

For more information or to book a consultation contact Playwork Partnerships at the University of Gloucestershire.

T: 01242 714601
team@playwork.co.uk
www.playwork.co.uk