

## Charitable Incorporated Organisations (CIOs)

### What is a CIO?

Charitable Incorporated Organisations or CIOs are a relatively new legal structure available for charities or charitable groups that wish to be incorporated. It can be picked instead of the hitherto process of registering as a charity and then as a company.



CIOs have been designed specifically for charities, allowing them to register just once with the Charity Commission as an incorporated form of charity which **is not a company**. This cuts out the need to register with and report to Companies House.

Reduced administrative burden is proposed as just one of the benefits of becoming a CIO. In addition to this, the CIO would have its own legal personality and so can enter into contracts in its own right rather than in the name of individual trustees. Trustees will also have limited liability.

CIO members still have key rights in law and under the Constitution and trustees are still responsible for managing the organisation (note that trustees for CIOs will only be trustees, they will **not** have the dual role of Company Director).

The policy paper for CIOs stated that *'The CIO will add to the range of legal structures which charities can choose to adopt, and is expected to be a popular legal structure, particularly for small to medium sized charities.'* This is because, an organisation can register as a CIO without having any income. To become a registered charity – under the previous regime - an organisation must have £5000 income, which meant that small organisations could not receive a charity number – a 'catch 22' if a funder will only fund registered charities! The CIO form provides a registered number with the Charity Commission but does not have the income threshold, allowing for smaller organisations who need a 'number' to gain funding.



2,016 CIOs were registered in 2014, making up 41.4% of all charity registrations in England and Wales during the year. Since CIOs were first registered on 2 January 2013, 9,500 CIOs have been registered, as at the end of December 2016. (Sandy Adirondack, Legal Update)

However, still in the very early stages, there are concerns that for small organisations, especially those with income of under £5000, this will actually add administrative burden, through the need for all CIOs to register with the Charity Commission and then to fill out annual returns and accounts regardless of income. It could also make setting up a new charity more difficult, as CIOs only come into existence once registered with the Charity Commission and this could take up to 40 working days. If an organisation needs limited liability now, becoming a CIO may take too long, however, an organisation **cannot** register as a company first and then change to a CIO.

Having its own legal personality should make it easier for CIOs to hold property and enter into contracts, however, it has been argued that the legal framework surrounding CIOs does not currently support the registration of mortgages over a CIOs land and buildings, an issue that

could make securing lending arrangements difficult. In addition the Charity Commission does not maintain a public register of charges which may affect charities wishing to borrow money.

Of course there are always pros and cons no matter which legal form an organisation takes, and with CIOs in the early stages it is difficult to know where problems will arise. It is a positive step having a legal format made specifically for charities (although for many it might seem strange that Companies House and the Charity Commission did not simply come up with a joint registration procedure):

## CIO Overview

1. Incorporation	Yes
2. Limited Liability	Yes – for members & trustees (if in breach of trustee duties can still be personally liable)
3. Governing document	<p>Constitution (certain provisions prescribed by Charities Act 2011): must keep as close to template as possible. Legal guidance will be needed to make any big changes.</p> <p>Constitution will outline the rules for governance of the CIO including:</p> <ul style="list-style-type: none"> <li>• Membership and trustees</li> <li>• Optional to require members to contribute funds (normally £1) if CIO is wound up</li> <li>• Legal duty for members to act in good faith when exercising their powers</li> <li>• CIO law for certain governance procedures (e.g. proxy voting and communications to members) are very flexible (unlike for companies)</li> <li>• No explicit provision for trustee indemnity</li> </ul> <p>No amendments are valid until the CC approves them and it is currently unclear what amendments will be acceptable.</p>
4. Can register as a charity	Yes – this is a charity but with incorporation so there is no need to register as a charity as well. A CIO does not come into existence until registration is complete and charity is entered in the register of charities.
5. Ease to set up	Easyish! The Charity Commission has provided two constitution templates to choose from - fill this in and apply online using the usual charity registration form. You will need to be able to show Public Benefit, have clear charitable objects etc. May take up to 40 days.
6. Costs	Cheap – no fee currently
7. Sources of finance available	Grants, Contracts, trading, crowdfunding, fundraising events etc.
8. Regulator	Charity Commission only
9. Members	Yes – Foundation or Association. No members guarantee
10. Income requirement	No minimum income requirement
11. Converting to CIO	<p>Yes – unincorporated charities or charitable trusts or CICs (although delayed)</p> <p>No – existing charitable companies are currently unable to convert to a CIO, although this was supposed to be an option from 2014. The latest information is that it will come into force on 1 January 2018, and will be a phased implementation process</p>

	from 1 January 2018 to 1 June 2018.
12. Merger	Easy to merge CIO's together. No information regarding merging with a non-CIO
13. Insolvency	Insolvency laws apply

## The Pros and Cons of CIOs

Pros	Cons
Need only register with Charity Commission	Not as straightforward as running an unincorporated association or a charitable trust
Need only comply with Charity Law	Not as suitable for charities wanting to issue debentures
Limited liability for trustees and members	Does not come into existence until registered with the Charity Commission – therefore you cannot open a bank account etc. in its name until it is fully registered
Legal personality - enabling it to conduct business in its own name, rather than the name of the trustees	Cannot be an exempt charity
Suitable for small to medium sized organisations which employ staff and/or enter into contracts - simpler than establishing a charitable company	Submission of accounts and registers - for groups under £5,000 may involve a lot more work
Charities can transfer the ownership of any trading subsidiary company to the CIO.	May not be suitable for large/complex charities
Flexibility, for example, CIO constitution can allow for decisions at meetings to be by consensus	CIO legislation makes no provision for the maintenance of a register of charges - may make it more difficult to borrow.
Regime for electronic communications with members is also less rigid than the regime that applies to charitable companies i.e you can email all members without receiving permission first.	Members of a CIO will not have rights to receive accounts, call meetings, vote by proxy, demand a poll and remove a trustee unless the constitution expressly provides them.
Smaller CIOs can prepare receipts and payments accounts (under £250,000 annual income), while smaller charitable companies must prepare accounts on the accruals basis.	CIO can only change its written constitution with a written members resolution unanimous vote rather than 75% as a company
Provides more choice when looking at legal structures	Possibly adds more confusion when looking at legal structures
Reduced red tape	Law is unfamiliar and untested currently
Simpler transfer of permanent endowment	Charity Commission funding cuts leading to staff cuts.
Able to generate income in all the ways a charity can	Funders slowly becoming familiar with the structure

## The four main types of legal charity forms:

Trust	Unincorporated Association	Company Limited by Guarantee / Incorporated	Charitable Incorporated Organisations (CIOs)
the governing document is a trust deed or a will. There is no protection from liability for the trustees.	the governing document is a constitution or rules and there is usually a membership. The trustees are often referred to as the management committee. Again, there is no protection from liability for the trustees.	the governing document is a memorandum and articles of association for a company formed before September 2009 and articles of association for a company formed since then. The trustees (or directors) are protected in most circumstances against contractual liabilities. Charitable companies must register with Companies House and, usually, with the Charity Commission.	the governing document is a constitution. The trustees will be protected in most circumstances against contractual liabilities. CIOs only register with the Charity Commission.

## Timelines

CIO availability for incorporated bodies is still on hold. The government consulted on the secondary legislation from 1 April to 10 June 2016, which resulted in the publication of a draft legislation and explanatory notes on 13 September 2017. The draft statutory instruments point to it coming into force on 1 January 2018, with a phased implementation process from 1 January 2018 to 1 June 2018.

## Resources:

- Charity Commission: Start up a charity guidance <https://www.gov.uk/charity-types-how-to-choose-a-structure>
- Cabinet Office: <https://www.gov.uk/government/policies/making-it-easier-to-set-up-and-run-a-charity-social-enterprise-or-voluntary-organisation/supporting-pages/charitable-incorporated-organisation-a-new-structure-for-charities>
- Charles Russell Briefing: [http://www.charlesrussell.co.uk/UserFiles/file/pdf/Briefing\\_note\\_The\\_Charitable\\_Incorporated\\_Organisation\\_To\\_use\\_or\\_not\\_to\\_use.pdf](http://www.charlesrussell.co.uk/UserFiles/file/pdf/Briefing_note_The_Charitable_Incorporated_Organisation_To_use_or_not_to_use.pdf)
- Deloitte: <http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/uk-charity-charitable-incorporated-organisations.pdf>
- Directory of Social Change: [http://www.dsc.org.uk/portal\\_products/products/073977/attachments/CIOs%20Fact%20Sheet%2004%202013.pdf](http://www.dsc.org.uk/portal_products/products/073977/attachments/CIOs%20Fact%20Sheet%2004%202013.pdf)
- Gareth G. Morgan 'Key Guides: Charitable Incorporated Organisations' Directory of Social Change in association with Russell-Cooke Solicitors: 2013

- Russell-Cooke LLP: <http://www.russell-cooke.co.uk/clientUpload/document/file/Charitable%20Incorporated%20Organisations%20-%20January%202013.pdf>
- Sandy Adirondack's Legal Update: <http://www.sandy-a.co.uk/legalstatus.htm#cio>

## Support

If you would like any support with setting up an organisation, please contact the Development Team at Community Southwark: [development@communitysouthwark.org](mailto:development@communitysouthwark.org) or 020 7358 7020.