

DBULLETIN

Charity Commission Publishes CIO Guidance and Constitutions

On 28 March 2011, the Charity Commission published guidance on setting up a Charitable Incorporated Organisation (CIO), together with two model constitutions. The model constitutions are for a CIO whose only voting members are its charity trustees (foundation model) and a CIO with a wider membership, including voting members other than its charity trustees (association model).

Several of those reading the guidance may conclude that the attractiveness of the CIO regime may now be limited to:

- smaller charitable trusts without either pension liabilities or secured borrowings; and
- any charitable trust with permanent endowment.

What is a CIO?

A Charitable Incorporated Organisation (CIO) is a new corporate structure designed specifically for charities and will be an alternative to the current forms of charitable structures such as charitable companies, charitable trusts (such as almshouses) and charitable associations.

Key characteristics of a CIO include:

- Single regulation – CIOs are regulated by charity law and not by company law;
- Single registration – CIOs only need to register with the Commission;
- Separate legal personality and limited liability;
- Less onerous reporting and accounting requirements – CIOs do not need to prepare a directors' report under the Companies Act 2006, merely an annual report under the Charities Act 1993; and
- One annual return – CIOs must prepare an annual return under the Charities Act 1993 but they do not have to prepare an annual return under the Companies Acts

Implementation of the CIO

The guidance and model constitutions have been published before the statutory instruments necessary to complete the legal framework for the operation of CIOs have been considered by Parliament. The Commission says that this is to enable charities and their advisers to familiarise themselves with them. Therefore, the constitutions may change following Parliamentary scrutiny of the regulations. However, the Commission expects any such changes to be minor.

Significant amendments were made to the draft regulations following consultation carried out in 2009. In particular, there will be no provision for either a CIO or the Charity Commission to keep a register of charges over CIO property. The Commission recognises that this may limit the usefulness of the CIO structure for larger charities with significant assets. As a result, the CIO is likely to be most suitable for small to medium-sized organisations which that occupy rented premises, employ staff or enter into contracts on a regular basis.

Timing

While the Charity Commission was still hoping to implement the CIO, as a new form of constitution, from 1 April, given that there is a need for primary legislation to implement the insolvency provisions of the new CIO regime, the actual implementation date will depend on the

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availability of Parliamentary time. We suspect a more realistic implementation date is likely to be during the summer.

The CIO's will initially be offered to new charity applicants. Next "in the queue" will be larger charities (being charities with an income in excess of £250,000 a year) to whom the option of converting into a CIO is likely to be available from July/August.

The Office for Civil Society will publish an implementation timetable in due course.

Charity Commission guidance and model constitutions

As indicated above, the Charity Commission has published the first part of its guidance on the CIO, together with model constitutions for:

- A CIO whose only voting members are its charity trustees (referred to by the Commission as the foundation model) – which we believe will be the more popular model.
- A CIO with a wider membership, including voting members other than its charity trustees (referred to by the Commission as the association model).

The guidance includes general information about CIOs and details on how to set up, register and run them. The Commission has decided to publish its guidance and the model constitutions now so that charities and their advisers can familiarise themselves with them ahead of implementation. Additions to the guidance will be made by the Commission over the coming months.

If an existing trust decides to proceed with conversion to a CIO, then it would need to take the following outline steps:

- obtain consent from its lenders to the "conversion";
- ensure no pension liabilities are crystallised by the conversion;
- prepare a form of constitution;
- prepare a transfer agreement to transfer its assets and liabilities to the CIO;
- register the CIO as a charity (which will have a new charity number);
- sign the transfer agreement;
- transfer assets; and
- dissolve the current charity.

Comment

Lenders will need to become comfortable with the idea of lending to a CIO. The lack of the equivalent of a charges register at Companies House may not be insurmountable as security over land can be registered at the Land Registry.

CIO's will be attractive to trusts which employ people or are parties to trading contracts. However, we suspect that many charitable trusts will still prefer the option of incorporation as a company limited by guarantee as many trustees will be more familiar with the company law regime. That said, for trustees of trusts with permanent endowment a CIO may facilitate administrations.

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