

# MEMORANDUM

on

**Establishing a service providing charity:**  
charitable company or charitable incorporated  
organisation (CIO)?

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## **Establishing a service providing charity: charitable company or charitable incorporated organisation (CIO)?**

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## **Establishing a service providing charity: charitable company or charitable incorporated organisation (CIO)?**

### **1. Types of charity structure**

1.1 Charities are constituted in many different forms. The most common being:-

- a charitable trust;
- a charitable unincorporated association;
- a charitable company limited by guarantee; and
- a charitable incorporated organisation (CIO).

1.2 The first two types of charity listed above are “unincorporated charities”. The third and fourth are “incorporated charities.”

1.3 It should be noted that charity trustees are not always referred to as such in a charity’s governing document. For example, with a charitable unincorporated association, the committee members for the time being are, at law, charity trustees; and with a charitable company limited by guarantee the directors for the time being are the charity trustees. For ease, however, we have simply referred to “trustees” throughout this document.

### **2. Operating with a corporate legal structure: what does this mean?**

2.1 If a charity has a corporate legal structure, it has its own legal personality which means that it can hold assets (such as land and investments) and enter into contracts in its corporate name.

2.2 The advantages of the above are that:-

- there will be no need to transfer title to charity property or novate or assign contracts each time a trustee retires or is appointed;

- it is the charity, rather than the individual trustees, who can sue and be sued; and
- the trustees will have limited liability in that they will not, subject to certain exceptions, be personally liable for the debts of the charity, even if there are insufficient funds to honour such debts. (The exceptions to limited liability include, for example losses incurred by a charity as a result of a breach of trust/duty; non payment of PAYE and National Insurance contributions; wrongful trading situations; and payments made to a trustee when he/she is not legally qualified to act as a trustee).

2.3 Consequently, if it is proposed that your charity will be a “service providing” charity (rather than, say, a grant making charity) which will own or occupy land, will have employees and will enter into other types of contracts with third parties, it should be established with a corporate structure.

### **3. Which type of corporate structure?**

3.1 The two main types of corporate structure available for charities are:-

- the CIO; and
- the charitable company limited by guarantee.

3.2 The CIO is a relatively new corporate legal structure (available since 2013) which has been created specifically for charities. Before the introduction of the CIO, generally, in order for a charity to operate under a corporate structure, it had to be established as a company limited by guarantee. The company limited by guarantee was not designed for charities. Hence a charity established as a company has the added burdens of, amongst other things (a) having to comply with both charity law and company law and (b) being regulated by both the Charity Commission and Companies House.

3.3 There are some similarities between the CIO and a charitable company limited by guarantee in that:-

- CIOs have members as well as trustees (see the section below regarding the different types of CIO);

- from January 2018 all CIOs will be included in the Register of Business Names Index maintained by Companies House, which means that the names of CIOs will (a) show up when searching the Companies House website and (b) be subject to the regulations regarding “sensitive words or expressions” – however, Companies House and the Charity Commission have agreed a pragmatic approach with regard to CIOs that wish to use the words “charity”, “charitable”, “association”, “foundation” or “trust” in their names in that they will not be required to contact Companies House before submitting their application for registration to the Charity Commission;
  - CIOs are subject to the same insolvency and dissolution procedures as companies (although there is an additional bespoke voluntary dissolution procedure for CIOs);
  - the company director disqualification rules apply to CIOs; and
  - the rules governing CIO administration are similar to those of a company, in that CIOs are also required to maintain up to date registers of trustees and members.
- 3.4 In short, however, as the CIO provides the benefit of operating as a separate legal entity and affords the trustees limited liability without the burdens of having to register with, and be regulated by, Companies House, subject to certain exceptions (see paragraph 3.5 below regarding charges over charity assets), we would generally recommend the CIO model.
- 3.5 Companies House maintains a register of charges over company assets but there is no searchable register of charges over CIO assets. As a consequence, the CIO model may not be appropriate for larger charities wishing to enter into secured borrowing arrangements.

## **4. Foundation CIO or Association CIO?**

### **4.1 There are two types of CIO:-**

- *Foundation CIO*

This type of CIO would be appropriate where it is not intended that there will be a wider membership in that the trustees and the members will be one and the same.

- *Association CIO*

This type of CIO would be appropriate where it is intended that there will be a wider membership (ie. where membership is open to the general public or a specified section of the public).

- 4.2 The Charity Commission has produced model constitutions for both types of CIO and it expects these to be adopted without significant departure from the provisions of these documents. Some umbrella bodies have agreed with the Charity Commission a bespoke CIO constitution (based on the Commission's standard model) for their member charities.

We would be able to provide advice and assistance with the establishment of your charity and if you would like more details please do contact us.

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*This note provides a general summary only and it does not constitute legal advice. It is recommended that specific advice is sought in relation to the particular facts of a given situation.*