

Conversion of charitable companies to charitable incorporated organisations

Since January 2018 it has been possible for charitable companies to convert to charitable incorporated organisations.



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Alice Railton outlines the pros and cons of conversion

Prior to 2013 there was no legal form designed especially for charities: like hermit crabs, they took on forms (such as trusts or companies) that were intended for other purposes. However, in January 2013, the Charities Act 2011 introduced a new legal form designed specifically for charities: the charitable incorporated organisation (CIO). In January 2018, new legislation came into force that enables charitable companies and CICs to convert to CIOs.

Implementation is staggered, with charitable companies with an annual income of less than £12,500 able to convert from 1 January, and larger charities allowed to convert over time. Conversion will be open to all from 1 August 2018 (when charitable companies with an income of more than £500,000 will be able to convert).

Pros and cons

The Charity Commission has predicted that around 20% of existing charities will convert to CIOs in the next 10 years. The anticipated popularity of conversions is understandable – CIOs are intended to provide charities with the benefits of incorporation (such as limited liability), but within a more attractive legal framework. For example, CIOs are under no obligation to comply with company law (the commission is their sole regulator), and they benefit from simplified administration: there are currently no annual charges for a CIO; no fines for failure to file accounts on time; and the provisions for communicating with members using email are much more flexible.

However, it is worth noting that CIOs are still a relatively untested vehicle, there being no established legal framework (as there is for companies) to fall back on. For this reason, third parties may be wary of dealing with CIOs, particularly as there is no central register of charges for CIOs, which may make borrowing more difficult. There is also some degree of inflexibility: for example, written members' resolutions require unanimity, and amendments to the constitution will only take effect when the commission registers the changes.

Process

The process to convert to a CIO is relatively straightforward. To apply for conversion as a CIO, the company must:

1. draft a proposed CIO constitution (noting that this constitution will have to comply with the requirements of the Charities Act 2011); and
2. pass two members' resolutions: one to convert to a CIO and another to adopt the proposed constitution.

The company needs to send all of these documents to the commission, bearing in mind that if the proposed CIO constitution intends to make any regulated changes (those which require commission approval) such as amendments to the objects or the dissolution clause, the commission will refuse the application. As such, these amendments should be made either before or after the CIO conversion process.

Finally, the company's legal relationships should remain the same after it converts to a CIO, although the Department for Digital, Culture, Media and Sport has advised that the charity should seek advice on TUPE and any pension implications.

Conclusion

Conversion to a CIO may not be appropriate for all charities, but may be an attractive prospect for many. Charitable companies might consider converting to a CIO to take advantage of simplified administration and regulation, as well as the other unique features of a CIO.

Find out more

For more information, including more detail on the advantages and disadvantages of the CIO as compared with a charitable company, and the process of conversion, please contact Alice Railton or your usual BWB contact.

Charity Commission guidance on conversion is available here <https://www.gov.uk/guidance/change-your-charity-structure#convert-a-charitable-company-to-a-cio> and the timetable for implementation is at <https://www.gov.uk/guidance/legislative-changes-affecting-the-charitable-incorporated-organisation-cio>

BWB is holding a seminar on conversion on 17 April 2018: please see <https://www.bwblp.com/events/2018/04/17/conversion-of-charitable-companies-to-charitable-incorporated-organisations>