



Briefing Papers

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LIMITED COMPANY CHARITY CONVERTING TO A CIO

The Charity Commission has begun to accept applications from charitable companies where a request has been made to convert them into CIOs. Most new charities are CIOs but I wondered whether there was much point in a charitable company making the transition. After all they have their legal personality and their trustees' liability is limited.

Having had a couple of meetings with boards of charitable companies I've rather talked myself into changing my mind on this. There are clearly benefits to making the change, and limited downside as we shall see. So let's look at the detail.

WHY CONVERT

There are some advantages and some disadvantages to being a CIO compared with a charitable company. What is right for any particular charity should be considered in its specific context.

Some charity trustees prefer the idea of a CIO as it seems simpler. There's only one regulator (the Charity Commission), there's no need to consider company law or deal with Companies House and, for some prospective trustees, the perception of becoming only a charity trustee as opposed to also becoming a company director can seem less daunting.

The charity only has filing obligations with one regulator and, if the charity has an annual income of less than £250,000, it will benefit from more relaxed accounting rules.

On the other hand, charities that could want to borrow money in the future may find it easier to deal with banks if they have a charitable company as opposed to a CIO structure. This is particularly true if the charity is considering securing property that isn't land.

Where Companies House maintains a register of charges, the Charity Commission does not. This means that lenders to CIOs who are taking a charge against something other than land do not have any public means of recording (and alerting others to) their charge.

Other factors such as the more entrenched and familiar nature of company law compared with the law governing charitable incorporated organisations may be attractive to some, particularly larger, charities. Having said that, some very big charities are perfectly happy with their CIO status.

It's also worth noting that, whilst being a charitable company often means extra administration, charitable companies can often make changes to their constitutions much more quickly than CIOs can. Changes to a charitable company's constitution (its Articles of Association) come into effect on the date a special resolution of the company's members is passed (unless the charity is changing its objects in which case the change becomes effective on the date the amendments are entered onto the Register of Companies). Any changes to a CIO's constitution, on the other hand, only become effective on the date the Charity Commission registers the changes (although this may change in coming years pursuant to a proposal of the Law Commission). The Charity Commission is under-resourced, and its response times can be long meaning there can be a period of delay before a CIO's constitution is updated.

HOW TO CONVERT

It's early days but the process appears to be straightforward.

The online form is simple and bears no resemblance to an application for the registration of a new CIO.

The paperwork to be prepared are two resolutions

- the first showing the company members' agreement to conversion
- the second, showing agreement to the new constitution. A new constitution would of course be prepared.

This is an important part of the process, preparing an appropriate CIO constitution, which will inevitably look slightly different to the charitable company's Articles of Association.

This needs to be done carefully to ensure the charity does not inadvertently change the rights of its members or constitutional processes without proper consideration or authority to do so.

No regulated changes can be made during this process, such as changes to the wording of the objects clause, enhanced trustee benefits, amended dissolution, or name change. (If any regulated changes are wanted, they would need to be made outside of the conversion process, probably best post-conversion).

By remaining the same entity, albeit one with a new form of constitution, there will be no need to transfer staff or property, no need to set up new contracts etc.

Following conversion, they would no longer be registered as a company at Companies House; however, the charity will still appear on the Register of Companies, but as CIO. The only drawback to losing Company House status is that

more information is carried on trustees and changes in trustees etc, and this is all lost. Also any entries in the charges register will be lost.

Because a new entity is not being created, there is no need to worry about tying conversion into their accounting year. When pre-conversion accounts have yet to be filed, they will still need to be prepared as a charitable company, but these will only need to be filed with the CC.

It is a basically a case of considering whether the simpler structure of the CIO is a suitable vehicle for the charity, weighing up the normal pros and cons of each form. If there are loans, mortgages or leases the trustees should check with the lender or lessor that there are no objections to conversion (even though theoretically there should be no grounds to object, in reality this is best checked out). You do need to bear in mind that banks' understanding of charities can in cases be sketchy; their understanding of CIOs even more so.

The same applies to funders - again simply advising funders should be fine, but this may depend on the terms of the funding i.e. did a copy of the governing document have to be supplied with a funding bid?

An issue may arise because people and bodies are unaware of the process for converting a charitable company to a CIO and may incorrectly think the trustees are proposing winding up the company and transferring assets to a CIO, which of course is not the case.

They should speak to the bank, and any other relevant bodies and make it clear a new legal entity is not being created.

We can take you through the process if you decide to make the change. You can do it yourself easily enough but do take care and take advice when you need to.

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