

## A guide to charity incorporation

This information sheet looks at the pros' and cons' of incorporating a charity, and also looks at the new Charitable Incorporated Organisation (CIO) created under the Charities Act 2006, which has the advantages of incorporation without having to meet the dual regulatory burdens of both the Charity Commission and Companies House.

### Why incorporate?

The trustees need to decide whether it is in the best interests of the charity to incorporate.

The advantages of incorporation are that a company is a separate legal person and can therefore hold property and enter into contracts in its own name, without having to act through the medium of trustees. This avoids the need to transfer ownership of property and other assets when trustees change and makes the company, rather than the trustees, the employer of the charity employees and the contracting party in contracts of all kinds between the charity and third parties.

The disadvantages of incorporation are the added administrative burden and associated costs of reporting to Companies House as well as to the Charity Commission. However, these should not be substantial and the same form of accounts can be submitted to both. A company has to comply with the requirements of the Companies Act with regard also to the passing of resolutions, the keeping of minutes, disqualification of directors, liquidation etc, but these requirements, where not specified by Charities law, contribute to good practice.

Incorporation does not exclude the trustees/directors from all personal liability. They remain trustees of a charity and as such they remain responsible for any breaches of trust resulting in losses to the charity itself. The company structure creates a shield against claims by third parties against the trustees, but does not shield the trustees from claims by the charity itself.

### Setting up the company

The Memorandum and Articles of Association (the constitution or governing documents for a company) have to be agreed and signed by all the members/subscribers of the company. These would typically incorporate the objects and other details from the existing charity's constitution/trust deed, but the trustees/members may wish to take this opportunity to review and update these details. Forms need to be submitted to Companies House, including one setting out personal details of the directors/trustees, company secretary and registered office address. A company is usually incorporated within about one week of all the necessary signed documents being submitted to Companies House.

### Registration as a charity

An application then has to be made to register the new company as a charity. As it is a separate legal entity, a new charity registration number is given to it. If the existing charity is to remain in existence with the same

board of trustees as the company (see further below), and there is good reason, the Charity Commission may make a Uniting Direction enabling the old and new charity bodies to be treated as one for administrative purposes, under the same charity number. Approximately three months should be allowed for registration by the Charity Commission.

## Transfer of assets

Once the new charity has been registered, the assets and liabilities, and the ongoing work, of the old charity can be transferred to it under a Transfer Agreement. This may include transfer of employees (who would not be disadvantaged in any way), transfer of freehold and leasehold property (landlord's consent may be required) and assignment of ongoing contracts (for which consents may also be required).

## Retention of the existing charity

The trustees need to decide whether there is any reason to keep the original charity in existence, or whether to dissolve it in accordance with the dissolution provisions in the constitution/trust deed once the assets and liabilities have been transferred. Because the new company is a separate legal entity, it would not automatically be entitled to receive any legacies or income payable under covenants to the old charity. Before the implementation of the Charities Act 2006, many incorporating charities have kept the old charity alive to capture future legacy income. This will no longer be necessary from the second half of 2007 when the Charity Commission will hold a register that will make sure that legacies are automatically transferred to the new charity provided the correct details are registered.

## Charitable Incorporated Organisation

The Charities Act 2006 creates a new vehicle called a Charitable Incorporated Organisation (CIO), which will have the advantages of incorporation without having to meet the dual regulatory burdens of both the Charity Commission and Companies House. Due to the complex regulation required CIO provisions are not yet in force. A consultation has been launched and the closing date for responses is 10 December 2008. To view consultation documentation or to send a response to the consultation for consideration follow this link: [http://www.cabinetoffice.gov.uk/third\\_sector/consultations/current\\_consultations/cio.aspx](http://www.cabinetoffice.gov.uk/third_sector/consultations/current_consultations/cio.aspx). Our advice is that if you already have good reasons to incorporate you should not wait until the CIO becomes available. The processes of incorporation to a company and a CIO are similar and if a CIO is preferred later on the conversion will be relatively simple. The Charity Commission publishes up to date information about CIO implementation at <http://www.charity-commission.gov.uk/>.

## Contact

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