

CHARITABLE INCORPORATED ORGANISATION (CIO)

Introduction

A CIO is a new legal corporate structure that charities (and therefore churches) may adopt. Although it is a corporate entity, it is not a company recognised under Company Law and therefore it does not have to register with Companies House. However, being a charity it still has to register with, and is accountable to, the Charity Commission either in England and Wales or Scotland. The laws applicable to CIOs governed by each regulator are slightly different.

The chief advantage of forming a CIO is that the church officers are normally safeguarded from personal liability for the debts and obligations of the church. Having said that, the Grace Baptist Trust Corporation is not aware of any instances where church officers have lost their personal assets as a result of being held liable for the debts of a church. Usually, by taking appropriate care and consulting with professional advisors, risks can be adequately managed. Additionally, Trustee Indemnity Insurance is available. Nevertheless, the risk cannot be ruled out entirely and could be an increasing factor in today's litigious climate that tends to be hostile towards Christianity.

Having stated that church officers are normally safeguarded from personal liability when their church has CIO status, the point must be made that they would still be personally liable in certain circumstances. These would be if they were to act:

- in breach of their statutory responsibilities
- in breach of trust
- contrary to the law
- outside the provisions of the CIO

For instance, if the church constitution did not give the church the power to support overseas missions and the church did so, the church officers would be personally liable to repay to the CIO the full amount that had been remitted. Also, a CIO must not trade or enter into contracts if the liabilities of the CIO are greater than its assets (which might happen when churches take a "step of faith"). If a church CIO were to take on a financial obligation in such circumstances the church officers would be personally liable (notwithstanding the protection afforded by the church having CIO status).

Since this is such a new charitable structure, we have not yet had time to see how the issues that may arise will work out in practice. It may be that the CIO will protect the church officers against certain risks but may have a negative impact on other transactions that the church is likely to enter into more frequently.

For a church that becomes a CIO, a significant problem could arise if the church needed to borrow money for a renovation project. Since, as stated above, the church officers are protected from the debts of a CIO, it may be that lending organisations will be more reluctant to lend to churches that are constituted as CIOs since their scope for redress is limited. Alternatively, they may impose, say, a much higher rate of interest on the loan as a means of covering the additional risk.

Another possibility is that the lending entity may require a number of church officers to sign a legal guarantee (that sits outside of the CIO structure) in which they personally guarantee to repay the loan in the event of the CIO defaulting. So, although the CIO will afford protection to the church officers, they may have to sign a document effectively waiving that protection in order to get the loan for the church's building or renovation project.

CIOs are able to hold some types of church property in the name of the CIO, they are not necessarily able to hold all of the church's properties. Most chapels and manses are already held under their own Trust Deeds (having their own trustees) with trusts that must be adhered to absolutely. Such assets cannot be held within the church CIO as it is likely to have different constitutional provisions – especially on termination. In any case, if a chapel premises were to be embraced within a CIO and a claim were to be awarded against the CIO – so large as to encompass all the assets - the chapel would be lost. On the other hand, if the chapel were kept as a separate charitable trust, with its own set of trustees, the property would be safeguarded.

Formation of a CIO – Practical Aspects

The formation of a CIO must, of necessity, create a completely new and separate legal entity from the previous legal structure that the church was originally established under (an unincorporated association). This means that a number of its existing contracts, accounts and business relationships may, or must, be terminated and new ones established. The list that follows is given as a guide, but only as a guide. Some of the points raised are tremendously important and could involve the church in excessive compensation claims if they are dealt with wrongly. Others are relatively trivial and easy to deal with. Some churches may have more issues to address whereas others will have less.

- Existing contracts (e.g. equipment servicing) entered into before the change will need to be reviewed.
- The change of structure will mean a change of employer. The 'Transfer of Undertakings (Protection of Employment) Regulations' will apply. Employees will need to be given formal notice of any changes.
- Solicitors, accountants, financial advisors, independent examiners or auditors will require new letters of engagement.
- If the church has accepted loans or grants the providers must be consulted. If the new organisation cannot meet the terms of the original arrangements the loans or grants may need to be repaid.
- The old PAYE scheme will need to be closed and a new one opened.
- The church's record with HMRC in respect of Gift Aid Claims will need to be transferred.
- The church's bank may wish to renegotiate the terms of its bank accounts (their terms and conditions for CIOs being different than those for unincorporated associations).
- If the church rents or lets property, the arrangements must be reviewed as documents may need to be changed. The church may need to serve formal notices on tenants or landlords with whom formal arrangements already exist.
- The church may have the benefit of warranties that do not pass automatically.
- As the original church will be closed after the creation of the CIO, legacies may be lost if the necessary safeguards are not put in place.
- If the original church had a defined benefit pension scheme, conversion to CIO status is likely to trigger a cessation event rendering the existing church officers liable for the pension deficit.

Formation of a CIO – Legal Aspects

There is no provision in law for an unincorporated association to be converted directly into a CIO. The steps to be taken to accomplish this are therefore:

- Agree the new constitution in accordance with the church's existing procedures.
- Apply to the Charity Commission for registration as a CIO.
- Transfer all assets, undertakings, and liabilities of the original church to the newly established CIO.
 - In relation to the transfer of assets and contracts the original church will need to consider how it wishes to deal with these – e.g. by assignment / novation / asset transfer agreement.
 - In relation to the transfer of liabilities that cannot be settled (such as a mortgage loan) appropriate arrangements will have to be made with the lender.
- Consider how to deal with the transfer of staff and pensions – a consultation will need to take place if the 'Transfer of Undertakings (Protection of Employment) Regulations' apply.
- Dissolve the unincorporated association in accordance with the provisions contained within its governing document.
- Apply to the Charity Commission to have the original church charity removed from the register of charities (if previously registered).
- Print new stationery and update the church's website with the new details.

CIO Models

There are two models under which a Charitable Incorporated Organisation may be established – the *Association Model* and the *Foundation Model*.

Association Model: This provides for the church officers to be separately identifiable within the membership of the CIO. If the church officers are to have some direct accountability to a separate membership (as in the case of most churches holding to the congregational order of church government) the Association Model would be more appropriate.

Charity Commission Guidance and Model Constitution for an Association CIO:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/390170/AssociationModelConstitution.pdf

Foundation Model: This provides for the trustees and members of the CIO to be the same people and would be more appropriate where the church officers are more or less autonomous from the authority of the church membership (as in so-called 'leader-led' churches).

Charity Commission Guidance and Model Constitution for a Foundation CIO:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/390171/FoundationModelConstitution.pdf

Next Steps

In view of the information provided in this Fact Sheet, it is quite clear that legal advice must be taken by church officers that are considering the CIO structure for their church. The Grace Baptist Trust Corporation is not qualified to give such detailed advice, but Stewardship Services (UKET) Ltd (www.stewardship.org.uk) and the FIEC (www.fiec.org.uk) do offer this service. Their costs (quite reasonably) depend on the complexity of the circumstances of each church.

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