Charitable Incorporated Organisations

What is a CIO?

A Charitable Incorporated Organisation (CIO) is a legal structure that charities, including churches, can adopt. This structure has been around since 2013 and was created to enable charities to become incorporated without becoming companies. This special kind of structure can only be used by charities and many churches are now choosing to use it as a way of incorporating.

What other legal structures are there for churches?

Many Christian charities (whether churches or other organisations) operate as either a charitable trust or a charitable unincorporated association (CUA). Historically, the only realistic alternative to these structures (other than incorporating the body of trustees, which is relatively uncommon) was for a charity to incorporate as a company limited by guarantee, but this brought with it the burden of dual regulation by the Charity Commission and Companies House which many churches wished to avoid.

What are the benefits of becoming a CIO?

A CIO is an incorporated body and, therefore, has a legal personality of its own. This has several benefits:

Contracts: A CIO can enter into contracts in its own name, allowing it to employ staff for example, rather than requiring trustees to do this in their individual capacity on behalf of the charity.

Property: A CIO can own property in its own name. Trusts or CUAs cannot do this and they need individuals or a trust corporation to hold the property in trust for the church. This means the charity would need to go through a conveyancing process every time those individuals change. There is no need for this with a CIO.

Liability: A CIO's liability is limited. The trustees of CUAs or Trusts are personally liable for the obligations of the charity so a claim could be brought against some or all of the trustees. In a CIO, the liability of trustees and members is limited, and members would only be liable to contribute to the assets of a CIO if it is wound up to the degree specified in the CIO's constitution (either up to a specified amount or with no liability at all).

Association CIO or Foundation CIO?

If an unincorporated charity decides to convert to a CIO structure, its trustees must decide whether the Association or Foundation structure is most appropriate.

A Foundation CIO is one in which the only legal members of the charity are the charity trustees and vice versa. An Association CIO has a separate voting membership to the trustee body (although trustees can still be members and vice versa).

Which CIO structure is most appropriate will depend on the current membership structure of the unincorporated charity and what rights the charity wishes to give to its members.

Association CIO

Some churches are structured so that the church membership and the charity membership are essentially one and the same thing. Therefore, when a person becomes a member of the church they also become a member of the charity. This means that a person cannot become a member of the church without accepting the legal responsibilities and potential liabilities that go with being a member of the charity.

ECS have 2 different possible model constitutions for Association CIOs:

> **CG1 -** the members have formal voting rights that extend beyond the appointment and removal of the church leadership and approving changes to the constitution.

> **CG2 -** members' formal voting rights are limited to the appointment and removal of the church leadership and approving changes to the constitution. Members may be consulted on other issues, but may not formally vote

Foundation CIO

Churches may be structured so that the members of the church are not members of the charity in a formal, legal sense and will not, therefore, have rights to vote on any matters affecting the church unless the trustees choose to consult them. Such consultation rights may be set out in a church handbook or rules, but will not be formally enshrined in the church's constitution.
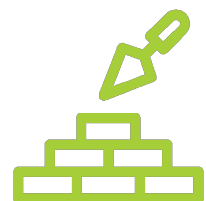
This model is suitable for those churches where the legal responsibility for decision-making rests with the church leaders. The congregation may be consulted on decisions but they are not part of the decision-making process as outlined in the constitution for example, appointing a new church leader.

> ECS have a model constitution for Foundation CIOs called **CG3.**

How does a church become a CIO?

There is no automatic process for a charity currently operating as a charitable trust or CUA to convert to a CIO.
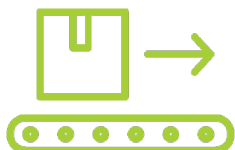
In order to become a CIO the charity must set up a new charity (the CIO) and then transfer all of the staff, assets, liabilities and members (as appropriate) from the existing charity to the new charity. Whilst in theory this is relatively straightforward, a charity's existing trusts may contain certain restrictions which can make the process more complicated.

The advantages associated with CIOs set out above will, therefore, need to be weighed against the potential time and cost required to set up the new CIO.

How can ECS help you?

We are experts in helping churches set up CIOs and transfer their assets into the new charity.
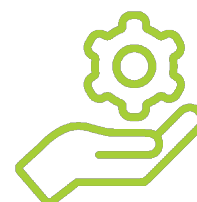
If you would like to know more details about the process, please download our booklet 'Charitable Incorporated Organisations' from our website (go to www.ecs.law/cio).

Or phone our office on 01858 411 568 to arrange a chat with one of our team.

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Christ-centred legal expertise