

converting from a charitable trust to a charitable company

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1 Preliminary note: the Charitable Incorporated Organisation

The draft Charities Bill, published in May 2004, has recommended the introduction of a new legal structure for charities, the Charitable Incorporated Organisation. This will permit charities and their trustees to gain the benefits of limited liability and separate legal identity outside the usual Company Law/Companies House framework. The necessary legislation has yet to be passed, and there is some uncertainty (as at May 2006) when this will be. Once it is, this may well become the de facto choice for those starting new charities. As a result, we are advising all clients considering conversion from a trust to a company to seriously consider delaying until the CIO option is available. Existing (or new) charities will be given an automatic statutory power to convert to the CIO format.

2 Procedure

2.1 The decision to convert

Trustees of the existing charitable trust must decide to convert by setting up a new charitable company and transferring the assets and liabilities of the existing trust to the company. This decision should be made at a properly convened meeting of the Trustees and recorded in a written Minute. This should be done before the new charitable company is established. In some cases, there may be reasons to keep some assets in the existing trust, but the normal case would be to transfer all assets and liabilities to the new charitable company.

2.2 Set up the new charitable company

Note that this is legally a separate and new charity. It will have a separate charity registration number. It should be possible to use exactly the same name as the existing charity although the Charity Commissioners could object to this and certainly would do if the existing charity is to continue indefinitely. Note that charitable companies limited by guarantee do not need to contain the word **Limited** in their title/name.

2.3 Ascertain the assets and liabilities to be transferred to the new charitable company

Then identify what steps need to be taken to give effect to these transfers. A *Transfer Agreement* can be entered into between the charitable trust and the charitable company which can cover most things in a general form of words and deal with certain specifics too. Particular things to look out for are maintenance contracts and other contractual liabilities where the agreement of a third party will be necessary to transfer the benefit and liabilities under contracts to the new company. An example of this would be a photocopier maintenance contract. A particularly important area would be any mortgages over property. You need to consult with the Bank/Building Society at an early stage to make sure they are happy with the company to take on the liabilities. They may require personal guarantees from some of the directors/trustees as they will be in a protected position if the mortgage is just with a charitable company as opposed to the situation when the mortgage is with a charitable trust and the Trustees were personally liable.

2.4 Winding up the old trust

Once the new charitable company has been incorporated and registered with the Charity Commissioners steps can be taken to wind up the old Trust. Once its assets fall below £5,000 there is a simple procedure for doing this. This involves the Trustees meeting to decide to wind up the Trust by transferring any remaining assets to the new charitable company. Final accounts have to be prepared to show a nil balance and where the remainder of the funds have gone. These are then submitted to the Charity Commissioners with an application to wind the trust up and remove it from the register.

2.5 The accounting implications

These need to be thought about and handled carefully. You need to decide from what date the company actually starts to operate and what its financial year will be. You have to decide whether to have an overlap period whilst both the Trust and Company are operating in which case separate Bank Accounts will be necessary for the company. Generally, it will be wise to get advice from your accountant or other accounts adviser at an early stage.

Note: If you require guidance on whether to convert to a charitable company, there is a separate briefing paper entitled "Charitable Trust or Charitable Company? A guide to the distinctions" which can be obtained from our website or by telephoning or e-mailing us to request a copy.