

NB The following is a summary of general principles and is not advice in any particular case. (revised 14/08/18)

There is no such thing as a conversion of a charity to a CIO, even though the Charity Commission (CC) uses this term. The exercise is the registration of a CIO as a new charity, and the transfer of the existing charity's assets and engagements to it.

A CIO is a charitable incorporated organisation, which is a body corporate, registered as a charity with a name ending with "CIO". CIOs are governed by the Charities Act 2011 part 11 (sections 204 to 250) and general and insolvency regulations, SI 2012/3012 and /3013. A CIO provides the advantages of limited liability and a legal entity capable of owing property and entering into obligations without the need for registration under the Companies Acts. References below to parts and sections are to the Charities Act 2011.

There is only one form of CIO, but the CC has prepared two model forms of constitution, namely, using the Commission's non-statutory names for them:

- "association model", in which there are trustees and voting members who are not trustees; and
- "foundation model", in which all the voting members are trustees.

In these notes the charity "converting" to CIO is a typical unincorporated body of the association type with a committee and trustees to hold its land and building, etc.

The conversion process envisaged by the CC is, simplified, as follows.

- 1 The existing charity prepares a constitution and registers a CIO (CA 2011 (sections 206 and 207).
- 2 (either) The existing charity it transfers its property to the CIO.
(or) The existing charity merges with the CIO.
- 3 The CIO continues the activity hitherto carried on by the existing charity and the latter is removed from the register of charities and is wound up.

It is not always as simple as that.

legal technicalities

CA 2011 Part 11 (sections 267 to 286) transfers The transferor's charity trustees pass a resolution under s268 to transfer the charity's assets to another charity. The resolution takes effect at the end of 60 days starting with the day on which the resolution is notified to the CC, unless during that period or any extension of it directed by the CC, the CC objects to it.

Except in the case of a transfer to a CIO, a transfer can be made only if the transferor's gross income in its latest financial year is not over £10,000. A charity with designated land cannot make a part 11 transfer. Designated land means land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

If the existing charity has permanent endowment the resolution must apply to both its permanent endowment and unrestricted property. A charity is to be treated for the purposes of this Act as having a permanent endowment unless all property held for the purposes of the charity may be expended without distinction between capital and income.

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CA 2011 Part 16 (sections 305 to 313) merger Relevant charity mergers must be notified to the CC and will be recorded in the register of charity mergers. A relevant charity merger is a transfer of all the property one of one or more charities to an existing or a new charity after which the transferor or transferors cease to exist.

References to a transfers of property include pre-merger vesting declarations defined in s310. Normally a pre-merger vesting declaration is limited to "unrestricted" property, but, in the case of a transfer to a CIO, SI 2012/3012, art 61 extends the property transferred to include "specified trust property", which is any permanent endowment or other property held on special trust specified in the vesting declaration. By s310 a vesting declaration vests the legal title to all the transferor charity's property in the transferee charity, without, except in specified cases, any further document transferring it.

transfer or merger?

Part 16 mergers are easier, quicker and (unless there is permanent endowment) more appropriate for a "CIO conversion" than transfers under part 13. Part 13 was derived from the 1993 Act sections 74 and 75 under the heading "Small charities" and is restrictive, because of the provisions for prior notification, the power of the CC to object and the exclusion of designated land.

Gifts to a charity might fail if, before the gift takes effect, the named charity ceases to exist, for example following its "conversion" to a CIO. Gifts, which would otherwise fail, are saved automatically by s311 of the Charities Act 2011, which says that, where there is a charity merger registered in the register of charity mergers, a gift made to a transferor after the merger is treated as a gift to the transferee.

practical technicalities

In few cases will a pre-merger vesting declaration be sufficient to transfer the whole of a charity's assets and engagements to the transferee. It is not the merger, but is made in connection with a relevant charity merger and must specify the date on which the assets transfer. The CC and other support bodies tend to skim lightly over the various steps and procedures that are commonly necessary to effect a merger, which include the following, for some of which a merger agreement might be needed:

- altering the existing charity's constitution to enable it to merge;
- the members' consent to the proposal transfer to a CIO;
- ascertaining the assets and liabilities;
- if a pre-merger vesting declaration is used, transferring the property (land held as security for money, shares and stocks etc) excluded from automatic vesting;
- if a pre-merger vesting declaration is not used and the CIO is to have the same custodian as the present charity, making arrangements with custodian of assets for either the custodianship to be changed in favour of the CIO or for the assets to be transferred to the CIO;
- checking with HMRC whether the reference number for gift aid will be transferred to the CIO and whether existing gift aid claims must be completed before the existing charity is wound up;
- checking with banks etc for procedures to "transfer" accounts;
- ongoing contracts may need to be novated, replaced with new contracts or left to run out by future ordering and invoicing with the CIO;
- transfers of employment contracts under TUPE;
- reminding members and officers of an unincorporated charity of their personal liability for the charity's obligations, that the protection of limited liability given by a CIO applies only to future liabilities and that dealing with the existing charity's liabilities can be more complicated than might appear superficially; and
- notification to whole membership, beneficiaries and the public at large.

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