Lancasterparr
LEGAL ADVICE FOR THE CHARITY AND COMMUNITY SECTOR

CLG, CIO or CIC?

Charitable company limited by guarantee (CLG)

Advantages

- suppliers, banks, funders and lenders familiar with charitable CLG's
- high level of transparency at Companies House – has been much easier to obtain information and documents from there than from Charity Commission (although Commission improving, plus has moved to online filing)

Disadvantages

- have burden of dual registration with, regulation by, and reporting to, both Charity Commission and Companies House
- subject to Companies Act 2006 (longest Act ever) and EU company law directives
- individuals on governing body/board are both charity trustees and company directors unclear overlap of duties under both company law and charity law
- company form designed for profit-distributing enterprises and assumes members have financial interest in company – not the case for charities
- members do not have an obligation to act in the interests of the charity, unlike Trustees

Charitable Incorporated Organisation (CIO)

Advantages

- CIO is the new corporate, limited liability structure specifically for the charity sector in England and Wales, with own legal personality
- it is subject only to registration with, and regulation by, the Charity Commission (not Companies House)
- no minimum income registration threshold for CIO's
- Charitable company's dual "*director/trustee*" role removed, so personal exposure of trustees under company/insolvency law reduced (e.g. to potential fines)
- Trustees will also benefit from corporate limited liability of CIO - although still subject to personal liability for any breach of trust

Disadvantages of CIO

- banks, funders and lenders may be wary of new CIO form for some time (as when CIC's were first introduced)

- two-tier governance structure of (a) trustees and (b) members - similar to CLG's, despite lobby for single tier – same scope for confusion

- CIO members have new express duty to act in best interests of the charity (unlike members of a CLG)

- Charity Commission is not operating a register of Mortgages/Charges (unlike Companies House who operate such a register) so banks may be reluctant to lend to a CIO as they cannot record their mortgage on a public register

- all CIO's will have to submit accounts and annual returns to the Charity Commission regardless of income level

- how will the Commission's role as regulator be affected by its budget and staffing cuts? Slower response times than Companies House.

Community Interest Company (CIC)

Advantages

- introduced in 2005 so now well established
- can have shareholders or be limited by guarantee with no shares
- members' liability can be limited, e.g. £1
- members can vote at the AGM
- membership can be limited to the Directors or be a wider membership
- do not have to produce full accounts, only show income & expenditure

Disadvantages

- not a charity, cannot be a charity
- board of Directors controlled & appointed by the membership
- also third parties can appoint *ex-officio* or nominated Directors
- members can vote at the AGM; if a wider membership, risk of clique rule
- Regulatory framework: CIC Regulator and Companies House
- no special tax reliefs
- no mandatory rates relief – at discretion of the local authority