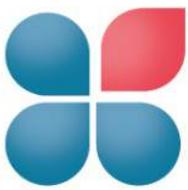


# Becoming a CIO – Is it right for us?

**Heritage Lottery Fund Offices**

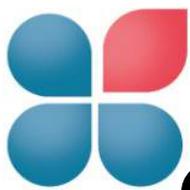
Cambridge

20<sup>th</sup> March 2014



# Workshop Objectives

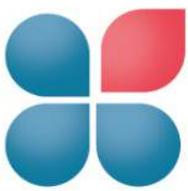
- Learn about the common legal structures used by museums
- Understand the benefits of incorporation
- Consider the similarities and differences between a Charitable Company Limited by Guarantee (CCLG) and a CIO
- Clarify whether CIO legal structure is right for your museum
- Explore how to leverage the application process to improve your governance
- Develop confidence in applying to the Charity Commission to become a CIO
- Prepare a governance / management checklist for large financial grants and/or other activities



# Common Museum Legal Structures

Type of Document	Organisation Type	Regulator(s)	Unincorporated / Incorporated
Constitution	Association	Charity Commission	Unincorporated
Rules	Association	Charity Commission	Unincorporated
	Industrial & Preservation Society under I&PS Act 1965 **	Financial Conduct Authority	Incorporated
Trust Deed Deed of Trust Deed of Settlement Will Trust	Trust Trust Incorporated under Charities Act 1993	Charity Commission	Unincorporated
Memorandum & Articles of Association	Charitable Company Limited by Guarantee (CCLG)	Charity Commission Companies House	Incorporated
<b>Since Dec 2012</b>			
Memorandum & Articles of Association	Charitable Incorporated Organisation (CIO)	Charity Commission	Incorporated

\*\* Obtain certification from HMRC that they are charitable for tax purposes



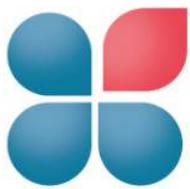
# Benefits of Incorporation

## Unincorporated

- No legal personality
  - Assets in trustee name(s)
  - Leases in trustee name(s)
  - Employment and other contracts in trustee name(s)
  - Admin process and legal costs as trustees change
  - Legal action can only be taken up by a trustee or member in their own name
  - Signatory trustees have taken on personal legal responsibility
- Variable and often imprecise legal structure which has become out-of-synch with Charity Commission best practice
- In the event of dissolution members have unlimited liability for unpaid debts
- If income > £5,000 then regulated by Charity Commission
- Lower accounting and audit expenses

## Incorporated

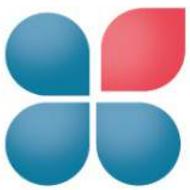
- Legal personality
  - Assets, employment and other contracts in organisation name
  - Legal action taken up in organisation name
  - No admin or legal costs as trustees change
- Well formulated legal structure for CCLGs recently updated by Companies House to reduce statutory responsibilities for small organisations
- In most situations including dissolution members have limited liability
- Regulated by Charity Commission and possibly Companies House, or Financial Conduct Authority
- Higher accounting and audit expenses



# Incorporation Options

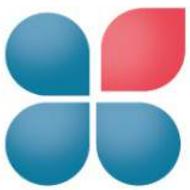
Model Legal Structure	“Foundation” Model (Voting members = trustees)	“Association” Model (Voting members other than charity trustees)
Charitable Company Limited by Guarantee (CCLG)		
Charitable Incorporated Organisation (CIO)		

Industrial & Provident Societies are exempt charities and cannot become CIOs ie their only option is CCLG



# Similarities Between CCLG and CIO

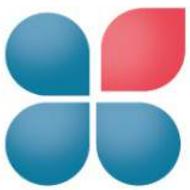
- **Both legal structure supports charities**
- **Asset lock** : Assets must be used in perpetuity for charitable purposes. Can be used for other purposes other than the charity's, but only with the consent of the Charity Commission or relevant court
- **Members have limited liability in most situations** including debts to third parties, eg under contracts. But it does not protect against :
  - wrongful trading (all members)
  - personal liability for :civil fines eg health & safety law
- **Primary purpose, ancillary and small scale trading**
- **Able to set up trading subsidiary to manage taxable profits**



# Differences between CCLG and CIOs

## Registration

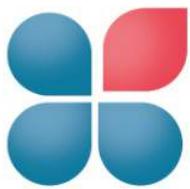
- CCLGs require dual registration with Companies House and Charity Commission. Whereas CIOs only register with Charity Commission i.e. dual vs sole regulator
- CCLG 2 part registration. Firstly in printed form with Companies House and then on-line registration with Charity Commission. Whereas CIO registration is on-line only
- A CCLG can be set up by Companies House in less than 1 week and then up to 8 weeks with the Charity Commission. The Charity Commission estimate 8 weeks for CIOs
- Register of CCLG members is open to the public, whereas Register of CIO members is open to members and trustees for CIO business only
- More information about CCLG directors publically available via Companies House



# Differences between CCLG & CIO

## Governing Document

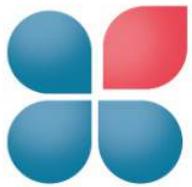
- CIO Constitution (Mem & Arts) must follow CC model or be very close
- Written resolutions to amend governing document require 100% members for CIOs and 75% for CCLG
- Resolutions take effect immediately with CCLGs (except objects), whereas amendments to CIO constitution do not take effect until registered with CC
- CIO members (not just trustees) must act in the interests of the CIO
- CCLG members have the right to remove directors under Company Law. CIO members have a comparable right but only if it is included in the CIO's constitution



# Differences between CCLG and CIO

## Banking and Accounts

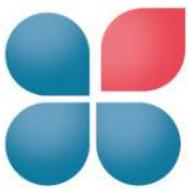
- CIO bank accounts in museum name cannot be set-up until registered. CCLG can be done as soon as company registered with Companies House and before registration with Charity Commission
- All CCLGs must prepare accrual accounts. CIOs with income up to £250k can use simpler/cheaper payment and receipts, otherwise accrual accounts
- Independent examination of payment/receipt accounts cheaper than accrual accounts. For smaller museums the examiner does not have to be a qualified accountant.
- Company House issues fines for late filings with potential for criminal conviction. There are currently no CIO fines



# Differences between CCLG and CIO

## Special Issues

- Companies Register includes publicly accessible register of charges such as mortgages , whereas CC is not maintaining a similar register
- Potential lenders may be uncomfortable if there is no easily available information of charges against CIO assets
- Specific procedures for charities with private endowments – to be announced
- CIOs can only amalgamate with or transfer their undertaking to another CIO.
- Winding up solvent CIO easier than CCLG. Winding up insolvent CIO same as CCLG. No experience yet.



# High Level Conversion Process

## Preparation

- Review assets and develop asset transfer plan (legal support)
- Review funding agreements/commitments /legacies novation in principle (legal support & trustees)
- Review transfer plan with accountant/auditor

## CIO Registration

- Review CC CIO Foundation / Association model & select options (vol/trustees)
- Complete & submit CIO Application form (vol/trustees)
- CC review (estimate 8 weeks)

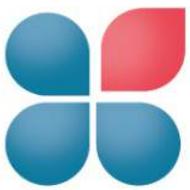
New charity registration number

## Formal Transfer

- Open bank accounts (vol/trustees)
- Transfer all assets to CIO as at Transfer Date
- Change contracts and payment arrangements eg utilities
- Transfer insurance
- Notify HMRC

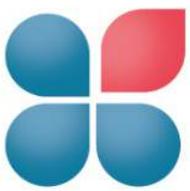
## Completion

- Provide final report & accounts to CC as at date of winding up
- Request removal of charity from register of charities (CC)
- Request removal of company from Companies Register (if appropriate)



# Is Your Board Effective?

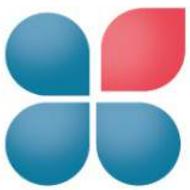
- Are you focused on providing public benefit?
- Do you have a vision, long term objectives and a plan to achieve them?
- What skills and experience does your Board need?
- Do you have the right policies in place?
- How do you ensure there is minimal personal benefit?
- How do you differentiate between governance and management?



# What are the duties of trustees?

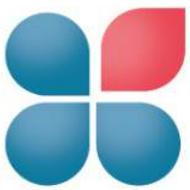
- Trustees have, and must accept, **ultimate responsibility** for directing the affairs of their charity, ensuring that it is **solvent and well-run**, and **delivering the charitable outcomes** for the benefit of the public for which it was set up.

*Charity Commission CC3a - The Essential Trustee: An introduction*



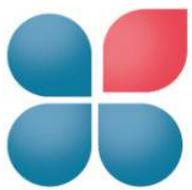
# Questions for a (good) trustee

- Do I really want to be here?
- What do I want this organisation to do/achieve?
- What can I bring to the party?
- What can I/am I prepared to do?
- How can I deliver what I want to do?



# Issues for Trustees

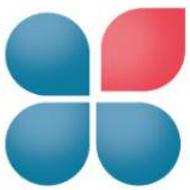
- **Responding to change**
- **Managing people**
  - Communications
- **Planning**
  - Succession
- **Risk**
- **Identifying role-model museums**
- **Money**



# WARNING

***ELECTRIC FENCE***





# CIO Registration Process

## **Application form**

- Data collection
- Charitable objects (new form)
- Public benefit and personal benefit questions
- Board review and approval

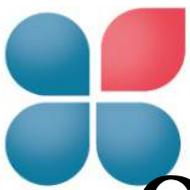
## **Submission**

- Application form
- Signed trustee declarations
- Proposed Mem & Arts

## **Charity Commission Questions and Request for Additional Information**

- Primarily more detail around public benefit or personal benefit
- New organisation – will ask for business / financial plan (interest is sustainability)
- If relying on external funding may ask for proof of funding
- Suggestion for improved charitable objects

**Success = Registration number**



# Governance Checklist for Large Financial Activities

## Delegated Authority

- Project/Sub-Committees : Terms of Reference
- Staff/Trustee/Volunteer : Job/Role description
- External organisations : Contracts / Ah-hoc decision-making

## Risk Mangement

- Identify key risks to success
- Agree mitigation plans to deal with risk and/or manage it

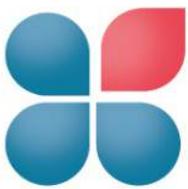
## Financial Mgmt

- Separate bank account for restricted and match-funding
- Multi-year cash flow management & reporting – unrestricted and restricted
- Purchasing and Expense policies
- Fraud controls

## Learning and Performance

- Plan ahead and start information collection eg volunteer hours

- Establish appropriate targets/ indicators



# End of Workshop

## Q&A

### Further Charity Commission Reading

- FAQs about CIOs (search on “CIO”)
- Public benefit overview and detail (search on “public benefit”)
- Personal benefit (search on “conflict of interest”)
- Registering your charity (select “Start up a charity”)

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