Legal structures

Deciding how to structure your company is an important decision even if you're a co-operative planning to tour to just one centre outside your home town.

Consider both the worst and best-case scenarios. Make decisions about the consequences of a loss or a profit at the beginning rather than the end of your tour. For example, how would you recover a potential loss?

Your legal structure impacts on your financial – and sometimes your administrative – structure and so your decision will affect these aspects of your business. Financially, your legal structure will determine who bears the ultimate risk of a tour. Surprisingly, a profit can generate more angst than a loss.

When considering a legal structure for touring purposes always consult a lawyer. The best way to find one is to ask around within the performing arts industry. For free introductory legal advice, consult the Community Law Centre (www.pie.co.nz/lsb/comlawcentres.htm). Citizens Advice Bureau (www.cab.org.nz) can also provide general help. The four options for a legal structure are:

- partnership
- charitable trust
- sole trader
- limited liability company

Partnerships

A partnership is where two or more people come together for a specific project. The partnership is recognised in a written partnership agreement, which states the aims, objectives and responsibilities of the partnership. Partners usually have equal responsibility, unless there is agreement otherwise.

A straightforward partnership can be expressed on a single sheet of paper, which is signed by all the partners with all signatures witnessed by a person who is not a member of the partnership. The agreement is not legally binding if it is not signed in the presence of a witness.

This process doesn't have to involve a lawyer or accountant. However, if you're new to the process then it may be worthwhile involving a lawyer or accountant to ensure the agreement gives you adequate financial protection. You should also ensure the agreement operates within the confines of New Zealand law.

Within your partnership agreement you should include:

- the full and legal name of all the partners involved
- the purpose of the partnership
- the decision-making process (this will be important if the tour is not going well and a decision has to be made about cancelling performances)
- the work responsibilities/job description of each partner
- the financial responsibilities of each partner: how each person is contributing and how each will share in the profit/loss
- the dates for the beginning and end of the partnership if the partnership relates to a project with a finite timeframe
- a clear process for conflict resolution.

Questions for the group to consider include whether there are any public liability requirements involved in the partnership (refer Public liability, page 73). If so, how do you plan to deal with these? Is the workload distribution reflected in the profit/loss share arrangement? How will creative royalties be handled? (Refer Rights and royalties, page 75.)

Charitable trusts

Charitable trusts are more complex than partnerships and should be considered by groups planning long-term rather than short-term relationships.

The Companies Office's guidelines for charitable trusts[3] state that to be eligible for incorporation an organisation must exist principally or exclusively for a charitable purpose, or for any purpose that is religious or educational whether or not such a purpose is charitable. The following purposes may be the basis of registration:

- the promotion of education

3. Incorporating a Charitable Trust under the Charitable Trusts Act 1957, Companies Office. Available from www.companies.govt.nz/

- the promotion of religion
- the relief of poverty (not your own)
- other purposes of benefit to the community.

In the performing arts, it's usually the promotion of education or benefit to the community that acts as the basis for charitable trusts. The Companies Office's guidelines also state that it is charitable to establish facilities for recreation and other leisure activities if those facilities are provided in the interests of social welfare or are of public benefit.

A real advantage to charitable trusts is that they can be tax exempt. This status is not automatic and you need to apply for it. This means that donations to your organisation are tax deductible for donors.

The Charities Act 2005 instituted a number of changes to the status of charitable trusts. Charitable trusts are now required to be registered on the Charities Register set up by the Charities Commission. As well as maintaining the Charities Register, the Commission provides advice and support to charitable organisations in the areas of good governance and management. To find out more visit www.charities.govt.nz.

Sole trader

A sole trader is an individual who takes sole legal and financial responsibility for the tour. If you choose this option then be aware that if anything goes wrong, it's on your head alone.

Questions to ask yourself include: Is the risk worth it? Do you have adequate insurance cover – both personal and public liability? Will your personal assets be protected?

Sole traders are not required to register with the Companies Office. The status is automatic once you start trading as an individual.

Limited liability company

This structure allows you to limit your financial liability. A limited liability company is a formal and legal entity in its own right, separate to its shareholders or owners. It's relatively simple and inexpensive to set up and you can even register a new company online (www.companies.govt.nz).

There are a lot of compliance requirements (bits of paper, record maintenance, etc) involved in maintaining a company. If your tour starts to go downhill financially you are limited (to the value of the shares of the company) in how much money you will lose. If it's at all financially feasible you will usually be encouraged to trade your way out of a loss.

Beware of 'reckless trading' – deliberately trading past the point where it is obvious that you should stop. Reckless trading is a prosecutable offence. In this situation, your creditors may be able to seize your assets. As most touring groups have no assets to speak of, this means anything you own, such as your house, car, equipment, etc.

In the worst-case scenario you can declare the company bankrupt. The company's assets will then be divided among its creditors and you can walk away with your personal asset base intact as long as you haven't used your assets for security. However, as most of the creditors are likely to be the cast, crew and suppliers, such as accommodation providers and advertisers, and you may want to work with these people again, this decision is not one you should make lightly.

There are some penalties attached if you do declare the company bankrupt. You cannot act as a director of a company for two years and you may find that your relationships with your business colleagues, the Inland Revenue Department and your bank become fraught.

You can have more than one company at any one time. For example, large producers tend to start a new limited liability company for each of their shows. This ensures that if one show falls over it doesn't create a domino effect.

If you plan to employ people in any way to work for your company you will need to register as an Employer. It is possible to do this online. You will also need to complete monthly payroll returns. These forms will be sent to you at the beginning of each month and must be completed and returned with any payments owed by the 20th day of that month. Failure to do so leads to financial penalties.

For more information, refer to the Companies Office (www.companies.govt.nz).