



## STARTING A NEW ORGANISATION - STRUCTURES AND ENTITIES PART TWO

### Types of Legal Structures

#### Charitable Trusts

A trust is a legal entity established by the signing of a trust deed, which sets out the rules for the trust. A Charitable Trust is characterised by the fact that it must have a charitable purpose. (The Charitable Trusts Act 1957). A charitable trust board is a group of people that agrees to hold money or assets and carry out activities for charitable purposes, and that, as a body, is incorporated and registered under the Charitable Trusts Act 1957.

Trusts are useful in asset protection, estate and taxation planning because the assets are not owned personally. Instead they are held in trust for the beneficiaries that are identified in the trust deed.

Trustees can be held personally liable for debt of the trust though a well drafted trust deed and effective management of the trust administration will minimise the risk. Trustees need to take their position as Trustee seriously and act for the best interests of the beneficiaries.

#### *The charitable trust purposes must include at least one of the following:*

- Promoting education
- Promoting religion
- Relieving poverty
- Other purposes that are beneficial to the community

There is a wide public benefit test, requiring a significant group of the community to benefit from the trust's activities. The law in relation to these categories is complicated and further advice should be sought to ensure that the purpose will be considered charitable. The Charities Commission will make the final decision regarding eligibility of charitable status.

#### *Advantages:*

- A charitable trust is generally exempt from tax obligations except for GST (Goods and Services Tax), PAYE (Pay As You Earn) and possibly FBT (Fringe Benefit Tax).
- The trustees of a charitable trust have very wide obligations and responsibilities to ensure that the charitable purpose of the trust is met.

#### *Disadvantages:*

- It is possible to inadvertently breach the charitable purpose by allocating income derived from assets of the trust for purposes beyond the charitable definition.

#### Taxation

If the trust is charitable, then there are a number of income tax exemptions that then trust may be entitled to, as long as none of its income or funds can be distributed to any of its members. However, income tax exemptions are not automatic; the trust will have to apply in writing stating the exemption for which it is applying.

#### Incorporated Societies

An incorporated society is a group or organisation registered under the Incorporated Societies Act 1908 and, when incorporated, is authorised by law to run its affairs as though it were an individual person, that is, it has a legal 'personality'. An incorporated society must have a minimum of 15 registered members.

#### *Advantages:*

- The society becomes a separate legal entity from its members and can therefore lease, rent, buy, sell property, borrow money and enter into contracts in its own name.
- No personal liability for debts, contracts or other obligations of the society.
- Can have charitable purposes and may be able to obtain income tax exemptions in respect of this.
- Capable of perpetual succession, i.e. its existence continues despite membership changes.
- Incorporated Society can levy an annual subscription fee.

#### *Disadvantages:*

- An incorporated society needs to register every member for that member to take any benefits from the society.
- A society is not to engage in any operations involving financial gain.

### Taxation

Non-profit organisations that are registered and incorporated under the Incorporated Societies Act 1908 are taxed at the rate of 33 cents in the dollar. However, as is the case for charitable trusts, there are a number of income tax exemptions the society may be entitled to, as long as none of its income or funds is distributed to any of its members. As with charitable trusts, these tax exemptions are not automatic. The incorporated society will need to apply in writing, stating the exemption for which it is applying.

### Unincorporated Groups

Many groups are informal when first starting out. These groups may choose to become incorporated into more formal incorporated bodies or partner up with incorporated societies and charitable trusts that have separate legal identities, especially if the group wants to seek funding.

An unincorporated group will have no particular legal status. The rules and operating procedures are determined by the members of the group. While not legally required, it is recommended that these are recorded as a matter of good practice to ensure the group operates effectively.

#### Advantages:

- Simple to establish
- No legal record keeping required

#### Disadvantages:

- Members may be personally liable
- Membership status is uncertain
- Resolving disputes can be problematic
- No legal standing to own property or borrow money

### Umbrella Groups

Umbrella groups may include councils, federations, collectives or associations of organisations in the community and voluntary sector. They are formed by member organisations that wish to co-operate for shared purposes. When a group chooses not to become incorporated it may be helpful to find an umbrella organisation which is incorporated to save on administration costs and to share skills, experience and resources.

Working together with existing groups may provide opportunities to; deliver new, improved or more integrated services, make efficiency savings through cost sharing; develop a stronger, more united voice; and to share knowledge and information.

It is best practice to draft a clear, written agreement between the umbrella group and the unincorporated group to establish how you will work together. Organisations like community Waikato and other such organisations can help with putting together an agreement or Memorandum of Understanding.

#### Advantages:

- A great opportunity to develop partnership relationships in the sector
- Potential for low cost administration
- Opportunity to share resources
- No long term legal commitment

#### Disadvantages:

- You may be limited in your eligibility to seek grant funding
- Individuals may be personally liable
- Possible difficulty with asset management

The Community Net website has further, helpful information on umbrella groups.  
[www.community.net.nz/how-toguides/crk/structures/umbrella-groups.htm](http://www.community.net.nz/how-toguides/crk/structures/umbrella-groups.htm)

**Community Waikato is available to facilitate and support this process with you.**

**For more information please contact  
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