

CHAPTER 11

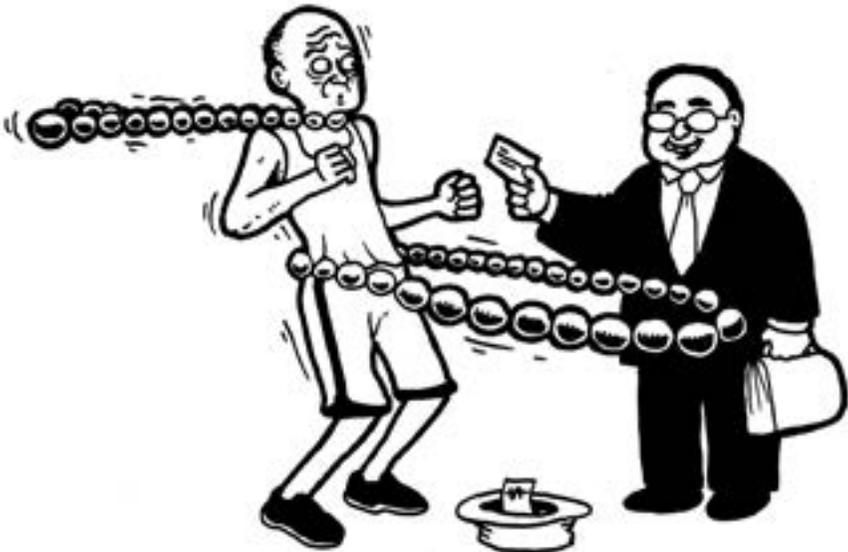
SETTING UP AN ARTS BUSINESS

"The way to get started is to quit talking and begin doing."

– Walt Disney

Overview

In deciding what kind of arts business you should set up, it is important to first have a clear idea about the aims and priorities of your organisation. This will help you choose the most appropriate legal structure for your business. This chapter highlights some of the key considerations that business owners face in choosing their preferred structure, and explains the advantages and disadvantages of the most common corporate structures available.



"If you want to really monetize this busking thing, give me a call."

What are the Differences between For-Profit Organisations and Non-Profit Organisations?

A for-profit organisation exists primarily to generate a commercial or monetary benefit for its owners. Profits from a for-profit organisation are permitted to be distributed to the organisation's owners for their personal benefit, typically in the form of dividends.

By contrast, non-profit organisations ("NPO"s) are legally constituted organisations whose main purpose is to support or engage in activities of public or private interest without any commercial or monetary profit. To be clear, NPOs are not expected to be loss-making – they can generate profits from their operations. However, an NPO is expected to use its profits to carry out its purpose. Any profit earned by an NPO is kept by the organisation for its future activities. NPOs can also use this profit to employ people and pay them reasonable salaries, and to meet other expenses.

NPOs enjoy certain legal benefits under Singapore law, because the law recognises that most NPOs exist for the purpose of helping the community. For example:

- there are certain legal structures that are only available to non-profit groups;
- there are a number of tax exemptions, concessions and benefits for eligible non-profit groups; and
- some government grant programmes and many private philanthropic bodies are set up only to fund non-profit groups.

All of the above are more fully described in this chapter.

Should I Adopt a Formal Legal Structure?

The first question you should consider is whether you want to adopt a formal legal structure for your business. As many freelance art professionals know, it is possible to set up and run a business without adopting a formal legal structure. In some cases, this may even be the best approach for your business, because it allows you to keep things very flexible. Some of the key benefits to not adopting a formal legal structure for your arts business include the following:

- your organisation can remain informal and does not have to hold meetings in a specific format;
- your organisation does not have to register with the government or tell the government or the public who its members are or what its financial situation is; and
- your organisation is likely to incur lower overall administrative costs as it would not have to pay any registration or annual fees to the government.

However, many businesses have discovered that there are also significant benefits to adopting a legal structure, particularly as they grow larger and more complex. Some of these benefits include the following:

- adopting a formal legal structure involves complying with certain administrative requirements under the law, which can encourage proper management and governance within the organisation;
- some legal structures allow your organisation to exist in perpetuity because the organisation has a legal identity separate to that of the people involved in it. This means that your organisation will continue to exist even when members change;
- depending on the legal structure you choose, you may be able to limit your liability (explained further below) and protect your personal assets; and
- many government grants and concessions, such as Institution of Public Character (“**IPC**”) status, are available only to organisations that exist as formal legal entities.

Whether it makes sense for your organisation to adopt a formal legal structure will depend on its objectives and business model. As a starting point, however, you should at least consider the use of a formal legal structure as you set up your arts organisation. Some of key factors you should consider are as follows:

- How big is your vision for your business? Do you intend to involve or employ other people in your business, or are you expecting to be the only person involved?
- Do you want full control of your business, or do you plan to delegate decision-making responsibility to one or more other people?
- Do you anticipate having to deal with potential legal liabilities, such as customer claims or potential disputes with your partners or clients, in the course of your operations?
- Are you prepared to spend time ensuring that your business is in compliance with the various rules and regulations applicable to the legal structure you have chosen?
- Do you intend to undertake any general fundraising from the public, or will your business be entirely self-funded?

The following two (2) sections contain a brief description of each of the different types of legal structures that are available to both for-profit organisations and NPOs, together with a short analysis of the pros and cons associated with each structure. The Section “What are the Registration Requirements?” contains further information on how to register an organisation under each of these legal structures.

What are the Different Types of For-Profit Legal Structures?

Sole proprietorship

A sole proprietorship is the simplest and most flexible business structure. As its name suggests, a sole proprietorship is owned by one (1) person, who has absolute say regarding its daily operations and management affairs. Sole proprietorships are not required to audit their accounts annually or to file annual returns with the Accounting and Corporate Regulatory Authority (“ACRA”). This simple structure is often used by freelancers and small individually-owned enterprises whose businesses either carry minimal risks or have not reached a scale that justifies a more complex legal form.

Table 13. Pros and cons of a sole proprietorship

Pros	Cons
<ul style="list-style-type: none">• Sole proprietorships are simple to set up due to their minimal administrative requirements.• Sole proprietorships are relatively easier to maintain and manage. There are no ongoing filing requirements apart from the annual renewal of the sole proprietorship.• Sole proprietorships can be terminated swiftly, with fewer legal formalities.	<ul style="list-style-type: none">• Sole proprietors are not entitled to significant legal protection because sole proprietorships are not distinct legal entities from the person running them. The sole proprietor will be held personally accountable for all the liabilities arising from his business, such that creditors and claimants may directly make claims against the sole proprietor’s personal wealth and assets.• Many government incentive schemes, such as tax-exempt status and other corporate business incentives, are made available only to corporate entities, and therefore cannot be accessed by sole proprietorships because they are not distinct legal entities.• Issues of perpetual succession (i.e. the continuation of an organisation’s existence despite the death of members, change in membership or exit of members) may arise in the event of the departure of the proprietor. For example, existing contracts with employees and suppliers will become invalid if the sole proprietor ceases to hold the business.

General partnership

A general partnership is a business formed by more than one (1) individual. A general partnership cannot have more than 20 partners – general partnerships with more than 20 partners must be registered as a company. The management of a general partnership rests with all of its partners, each of whom will have equal rights in the decision-making of the general partnership unless there is a partnership agreement that specifies otherwise. A general partnership is not required to audit its accounts annually or submit its annual returns to ACRA.

Table 14. Pros and cons of a general partnership

Pros	Cons
<ul style="list-style-type: none"> • General partnerships are relatively easy to set up and administer. • Partners in a general partnership are taxed on their respective shares of income from the general partnership at their personal rates of income tax. Depending on the income of each partner, paying tax purely in respect of personal income may be more advantageous than setting up a company and being liable for corporate tax which is currently fixed at a rate of 17%. • Funding may also be easier to obtain compared to sole proprietorships, as a wider assembly of partners may provide access to a bigger pool of funds or assets for the purpose of providing security if the general partnership needs to access loans from banks. However, many banks will require each partner in a general partnership to personally guarantee any loan that is made to a general partnership, so partners will likely remain responsible for the business liabilities of the general partnership • Partners are incentivised to contribute by pooling expertise and experience to increase the partnership's profitability. 	<ul style="list-style-type: none"> • General partnerships are not distinct legal entities. In any legal action, the general partnership can be sued in the names of individual partners. Unless there are specific agreements to the contrary, each partner of a general partnership is also jointly and severally liable for the liabilities of the general partnership. This means that the actions of one partner can potentially cause losses to every other partner of the general partnership. • Many government incentive schemes, such as tax-exempt status and other corporate business incentives, are made available only to corporate entities, and therefore cannot be accessed by general partnerships because they are not distinct legal entities. • As with sole proprietorships, there is also no perpetual succession of general partnerships. A general partnership will thus dissolve with the departure or the death of any one of the partners. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership.

Limited partnership (“LP”)

An LP consists of general partners and limited partners. The general partners of an LP are in the same legal position as the partners of a general partnership, as they have management control over (and are jointly and severally liable for) the debts of the LP. The liabilities of limited partners in respect of the partnership’s debts and obligations are limited to their individual contributions to the LP in accordance with whatever the partners have agreed. Limited partners forgo their rights to be involved in the management of the business in return for their limited liability protection. They will however have access to the partnership’s books and may offer advice (which the general partner(s) are not obligated to follow!) on the state of the business.

If, however, a limited partner participates in the management of the business, he or she forfeits his or her “limited liability” status and will then be treated as a general partner who is liable for the debts and obligations incurred by the LP. The First Schedule to the Limited Partnerships Act (Cap. 163B, 2010 Rev. Ed. Sing.) contains a list of activities a limited partner may undertake which will not be construed as “participation in management”. Examples of this include contracting with the LP and acting as an agent or employee of the LP within the scope of the authority conferred by the partners.

Similar to a general partnership, an LP is not required by law to have its accounts audited or filed with ACRA. It is only required to keep proper accounting records that will enable true and fair financial statements to be prepared if requested by the Registrar of LPs. There is also no maximum limit on the number of partners in an LP.

Table 15. Pros and cons of a limited partnership

Pros	Cons
<ul style="list-style-type: none">LPs are easy to administer, with only basic account-keeping requirements and no ongoing filing obligations. The limited partners are not required to disclose the amount they invest in the LP at the point of registration.	<ul style="list-style-type: none">As an LP is not considered a separate legal entity, the general partner(s) will be personally liable for all the debts and obligations incurred by the LP.Like sole proprietorships and general partnerships, LPs are not eligible for many corporate tax exemptions and benefits, and face the same difficulties with perpetual succession, unless this is provided for in the partnership agreement.

Limited liability partnership (“LLP”)

An LLP combines the features of a partnership and a company. An LLP gives partners the flexibility of operating as a partnership while protecting their investment in ways similar to private limited companies. There must be at least two (2) partners and one (1) manager at all times. A partner of the LLP can also be the manager of the LLP.

The manager of a LLP has certain significant legal responsibilities. For example, the manager is required to file annual declarations of solvency or insolvency with ACRA stating whether the LLP is able to pay its debts as they become due in the normal course of the LLP’s business. If the manager makes this declaration without having reasonable grounds for his or her opinion, the manager may be guilty of a criminal offence. In addition, the manager must ensure that the LLP’s invoices and official correspondence contain the name and registration number of the LLP as well as a statement that the LLP is registered with limited liability. The manager must also lodge any change in particulars of the LLP with the Registrar of LLPs. If any of these duties are not complied with and result in penalties imposed on the LLP, the manager will be personally liable for these penalties.

Table 16. Pros and cons of a limited liability partnership

Pros	Cons
<ul style="list-style-type: none">• LLPs have separate legal identities from those of their partners. A LLP can therefore own properties, enter into contracts and sue or be sued in its own name. A partner of an LLP enjoys limited personal liability and thus will not be held personally responsible for the wrongful acts of another partner. However, each partner will still be liable for any claims and losses that result from his or her own wrongful act or omission.• LLPs benefit from perpetual succession. Thus, the resignation or death of any of the partners does not affect the existence, rights or liabilities of the LLP.	<ul style="list-style-type: none">• An LLP is required to keep accounting records that adequately explain the transactions and financial position of the LLP.• The annual declaration of solvency or insolvency will be made publicly available. If the declaration is made without reasonable grounds, the manager could face criminal liability.

An LLP is not required to audit its accounts annually or submit its annual returns to ACRA. It is only required to keep proper accounting

records which sufficiently explain its transactions and financial position, as well as prepare profit and loss accounts and balance sheets if requested by the Registrar of LLPs.

Private Limited Company

A private limited company has a separate legal identity from that of its members or shareholders. Private limited companies can be limited by shares, and each member’s or shareholder’s liability is limited to the amount he or she invests in the company. Private companies are limited to not more than 50 shareholders (the owners of the company). Every company must have, among other things, (a) a constitution which governs the conduct and relationships between the company and its members, (b) at least one (1) director who is ordinarily resident in Singapore, (c) an annual general meeting once every calendar year, (d) an annual return (which provides essential information about the

Table 17. Pros and cons of a private limited company

Pros	Cons
<ul style="list-style-type: none"> • A company’s existence does not depend on the continued participation of any of its members. • As a company is a distinct legal entity from its shareholders, it may: <ul style="list-style-type: none"> • raise capital from investors or banks; • sue or be sued in its own name without incurring further liability to its members; and • hold land and other assets in its own name. • Certain government incentives, such as the SPRING Startup Enterprise Development Scheme, the Business Angels Scheme and the ACE Start-up Scheme, are available only to companies. Please refer to https://www.spring.gov.sg/ for more details. 	<ul style="list-style-type: none"> • Public and private companies have to comply with a number of legal and administrative requirements, including those concerning the appointment of directors, the conduct of annual general meetings and the appointment of company auditors and the company secretary.

company such as its members, activities and financial position) lodged with ACRA and (e) financial reports which have been audited by a professional accounting firm, unless the company's annual revenue is S\$5 million or less (in which case a professional audit of the financial reports will not be required).

A private company will be taxed at the corporate tax rate of 17% with a partial exemption for the first S\$300,000 of chargeable income. If the relevant conditions are met, new start-up companies may be granted enhanced tax exemptions for each of their first three (3) consecutive years of assessment. For the year of assessment 2017 (i.e. the preceding year starting 1 January 2016 and ending 31 December 2016), companies will receive a 50% corporate income tax rebate that is subject to a cap of S\$20,000 per year of assessment. Further details of the corporate tax regime can be found on the IRAS website (www.iras.gov.sg).

What are the Different Types of Non-Profit Legal Structures?

With non-profit legal structures, the key legal considerations do not so much involve the advantages and disadvantages of the different legal forms, but rather which legal structure best enables your organisation to achieve its intended result. The following are the main legal forms that are adopted by NPOs in Singapore.

Society

Governed by the Societies Act (Cap. 311, 2014 Rev. Ed. Sing.), societies are suitable for membership or volunteer-based groups that are small but strongly-linked to communities. An example of an arts society is the Photographic Society of Singapore which, among other things, provides workshops and seminars to promote the appreciation and practice of photography, and provides platforms for members to showcase their work.

Members of societies may be required to contribute to the funds of the society by way of subscription or annual fees, although many societies generate funds through donations from the public and fund-raising activities.

Societies are relatively easy to establish and to maintain, with fewer annual reporting requirements and less onerous statutory obligations as compared to other non-profit legal structures. Societies can also be appealing to donors who prefer donating and funding entities which are formally and legally recognised.

However, unlike a company, a society does not have a separate legal identity from its members. This means that all of its members will be held personally liable for its losses. Further, a society is required to submit its annual return and audited accounts within one month of the holding of its annual general meeting to the Registrar of Societies, or if no annual general meeting is held, once in every calendar year within one month after the close of its financial year.

A society can have a president, a secretary and committee members. These officers do not require particular qualifications. However, no person is permitted to act as an officer of a registered society if he or she has been convicted for an offence involving the unlawful expenditure of the funds of the society or of other criminal offence(s).

If you are planning to set up a society which is affiliated with an existing entity, then you will need to submit a copy of the affiliated entity's constitution and a letter from the affiliated entity supporting the registration of the society.



"Chope! If we register our society, then we won't be secret anymore, correct not?"

Charitable trusts

A charitable trust is a legal arrangement where a group of people (the trustees) administer assets (the trust property) for a charitable purpose. For an arts business, the charitable purpose might include:

- the advancement of education;
- the advancement of citizenship or community development; or
- the advancement of arts, heritage or science.

Charitable trusts are governed under the Trustees Act (Cap. 337, 2005 Rev. Ed. Sing.), along with all other types of trusts in Singapore.

A charitable trust does not require a permanent place of business or regular annual general meetings to be conducted. Trustees of charitable trusts have the power to manage the trust property to give effect to the specified charitable purpose, and must do so to the best of their knowledge and experience.

A charitable trust does not have a separate legal identity. Accordingly, all liabilities arising from the charitable trust will be borne by its trustees. This may not be ideal for a charitable trust which is involved in many discretionary transactions, as the trustees of the charitable trust may be exposed to significant potential liabilities. Generally, trustees are required to comply with strict accounting and auditing regulations, and failure or negligence in doing so will result in a penalty. Consequently, the costs of establishing and managing a charitable trust can be quite high.

Company Limited by Guarantee (“CLG”)

A CLG is an attractive legal structure for non-profit groups that require corporate status and want the advantage of limited liability. Every CLG has a constitution that governs the conduct and relationships between the company and its members, with liabilities limited to the guarantee given by each member. CLGs are prohibited from paying dividends and profits to their members. In the event of a winding-up of a CLG, any residual property that remains after settling the CLG’s liabilities will not be distributed to its members, but instead to institutions having similar objects as the CLG or to a registered charity as determined by the Commissioner of Charities. Examples of CLGs include the Intercultural Theatre Institute Ltd., which is an independent theatre school for students looking to earn a professional diploma in intercultural theatre, and the Musicians Guild (Singapore) Ltd, which is a professional association with the aim of supporting the community of working musicians in their career and professional development.

The amount guaranteed by each member of the CLG can be nominal. The CLG has a separate legal identity so it may sue or be sued in its own name.

However, a CLG is required to meet stringent legal obligations, including those related to the annual audit of accounts, the holding of annual general meetings and the filing of annual returns with ACRA.

Co-operative

A co-operative is a business entity which is underpinned by a social mission.

Co-operatives are often created for the purpose of uplifting the socio-economic well-being of their members. A co-operative identifies social problems and attempts to provide solutions to alleviate or address such issues. It serves the needs of its members without sacrificing the financial bottom line of the co-operative.

Compared to most non-profit legal structures, co-operatives are more mindful of their financial position and aim to remain economically viable. Members make equitable contributions to the capital as required by the co-operative and accept and undertake a fair share of the risks and benefits. Co-operatives work on the principles of self-help and mutual assistance to provide services to their members.

An example would be the NTUC FairPrice Co-operative Limited.

A co-operative is governed by the Co-operative Societies Act (Cap. 62, 2009 Rev. Ed. Sing.) and the Co-operative Societies Rules 2009 (Cap. 62, Section 349, 2009 Rev. Ed. Sing.) and has to be registered with the Registry of Co-operative Societies. There are generally two (2) pre-requisites:

- (a) Members of a co-operative get together to undertake feasibility study of the society including its objects, constitution and by-laws; and
- (b) They have to submit a business plan of the co-operative to the Registrar.

What are the Registration Requirements?

Registration of for-profit legal structures

Any activity which is carried out on a continuing basis for the purpose of profit is required to be registered with ACRA. There are a few