

WHAT'S IT WORTH? THE CULTURAL AND SOCIAL VALUE OF ARTISTS' WORKSPACES

'GETTING THE STRUCTURE RIGHT'

Liverpool, 2009

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WORKSHOP OVERVIEW

1. Choosing the best legal structure:
 - Registered charity
 - Non-Charity but non-profit
 - Other
2. The Charities Act 2006: the main changes
3. The new Public Benefit Guidance and what this is likely to mean for studio groups
4. Discussion and questions



CHOOSING THE BEST STRUCTURE

Pros and Cons of being a registered charity

- Tax benefits/rates relief
- Eligibility for grants
- Perception

Versus

- Need to ensure 'public benefit' under new Rules
- Regulation by Charities Commission and reporting
- Need to have independent and unpaid trustees
- Restrictions on trading

CHOOSING THE BEST STRUCTURE contd..

- **Registered charity**
 - Company limited by guarantee (CLG)
 - Charitable Incorporated Association (CIO) after late 2009

- **Non-Charity but non-profit:**
 - Company limited by guarantee (CLG)
 - Community Interest Company (CIC)

CHOOSING THE BEST STRUCTURE contd..

Company limited by guarantee (CLG)

- Traditional arts model
- Limited liability for directors
- Directors can be paid (unless registered charity)
- Studio artists can be directors (unless registered charity)
- Any surplus cannot be distributed to members
- Can be wide or narrow membership

CHOOSING THE BEST STRUCTURE contd..

Community Interest Company (CIC)

- Cannot be a registered charity
- Must pass 'community interest' test
- Directors can be paid reasonable salary/fees
- Studio artists can be directors
- 'Badge' of community benefit
- Constitution must have 'asset lock' to prevent assets being sold to non-asset locked companies
- Annual reporting and light-touch regulation by CIC Regulator

CHOOSING THE BEST STRUCTURE contd..

Community Interest Company (CIC) contd...

- Can be either:
 - Company limited by guarantee (CLG): no distributions to members
 - Company limited by shares: dividends and capital can be paid to shareholders (with limits)
- Can be used as 'hybrid' company which can attract outside investors or lenders and pay dividends

CHOOSING THE BEST STRUCTURE contd..

Charitable Incorporated Organisation (CIO)

- New legal form for charitable companies, not available until late 2009
- Single registration with Charity Commission only
- Limited liability for trustees/directors
- Less onerous reporting requirements
- Less onerous requirements for constitutional and governance changes
- Lower costs
- Can be formed by new registration or by converting an existing company



CHARITIES ACT 2006: THE OTHER MAIN CHANGES

- New heads of charitable purposes, esp. *The advancement of the arts, culture, heritage or science*
- Trustees remuneration
 - Trustees can be paid for services provided
 - Strict conditions must be met
- Trustees liability insurance
- New rules on altering constitutions
- New rules for professional fundraisers and commercial participators
- New guidance on Public Benefit



CHARITIES ACT 2006: NEW PUBLIC BENEFIT REQUIREMENTS

Stricter rules:

- For obtaining charitable status
- For existing charities
- In future all charity trustees will be under a legal duty to ensure the charity complies with the Commission's published **Guidance on Public Benefit**
- No more presumption of Public Benefit for charities for relief of poverty, advancement of education, and religion
- Reporting: Charities will have to include a Public Benefit statement in their annual reports

CHARITIES ACT 2006: THE CHARITY COMMISSION'S GUIDANCE ON PUBLIC BENEFIT

Principle 1: There must be an identifiable benefit or benefits

➤ *What are the benefits that arise from your organisation's aims?*

Principle 2: Benefit must be to the public, or a section of the public

➤ *Who do your organisation's aims intend to benefit?*

➤ *If the benefit is to a section of the public, how are the beneficiaries defined or what restrictions are there on who can have the opportunity to benefit?*

CHARITIES ACT 2006: THE CHARITY COMMISSION'S GUIDANCE ON PUBLIC BENEFIT

Main changes for studio providers:

- Must be able to show that any benefit to studio members is 'ancillary' to the wider public benefit the organisation provides
- Increasing focus on 'public benefit' activities such as community, educational and outreach activities, open studios
- 'Relief of poverty' charities may find it harder to satisfy the Charity Commission that this demonstrates sufficient public benefit
- Further guidance to come from the NFASP

CHARITIES ACT 2006: THE CHARITY COMMISSION'S GUIDANCE ON PUBLIC BENEFIT

Other changes:

- Any restrictions on the section of the public which can benefit must be reasonable and appropriate to the organisation's aims
- Fees charged for workshops and other 'public benefit' activities must be reasonable and those who cannot afford the charges must not be excluded
- Charities with restricted memberships (e.g. where studio artists alone are members) should ensure that the charitable benefits they provide are not confined to these members alone.

CHARITIES ACT 2006: THE CHARITY COMMISSION'S GUIDANCE ON PUBLIC BENEFIT

Recommendations to trustees of studio provider charities:

- Review the activities of the organisation to ensure that (a) these meet the requirements of the new 'public benefit' Guidance; (b) these are consistent with the aims or 'Objects'
- Review the constitution to ensure that all the stated aims are charitable under new regime; if not, consider amendments (requiring consent of the Charity Commissioners)
- Take professional advice where needed!