



E Tipu e Rea

Providing independent support to New Zealand's
Partnership Schools | Kura Hourua

Notes from a presentation by Rob McLeod (Chairman of E Tipu e Rea) to Round 5 applicants seeking to establish a Partnership School | Kura Hourua, 02 May 2017.

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Introduction

This brief note is not a substitute for tailored advice to your particular situation. You should only use it to guide your research and analysis of what kind of entity suits your particular purpose.

The Ministry of Education requires every Partnership School | Kura Hourua (PSKH) to operate via a legal entity. (Section 2 definition of “sponsor”: section 158B of the Education Act 1989 (the Act), and the RFA documentation 2.8(a))

If you are launching your partnership school from within an existing organisation, that existing organisation design will have a material impact on the organisational design of your School.

We recommend that you establish a separate entity for the School itself rather than operate the School in an entity that is running other enterprises. Your wider organisation will have implications for the costing and allocation of organisation-wide shared services and other resources.

Organisations (general principles)

1. It is impossible to operate and manage an enterprise without an organisational structure. All organisations will typically have 5 key stakeholders, namely owners, governors, staff, suppliers (including suppliers of finance) and customers. Organisations convert resources (capital and labour) received from supplier stakeholders into goods and services for the customer stakeholder. A school converts resources to produce educational services to students.
2. There are two basic forms of organisation for any sizeable enterprise, namely companies and trusts.

3. Company shareholders appoint the company directors, the directors appoint the CEO, and the CEO appoints the management team (otherwise referred to as the Executive, which the CEO leads). Conversely, the management team is accountable to the CEO, who is accountable to the directors, who are accountable to the shareholders.
4. The key advantages of a company include:
 - a. Limited liability.
 - b. Raising capital.
 - c. Clearly defined roles and accountabilities for shareholders, directors, and management.
 - d. Transferrable ownership rights (namely shares).
5. A trust constitutes a legally enforceable relationship between its settlor, trustees and beneficiaries. The settlor transfers property to the trust to be administered by trustees for the benefit of beneficiaries typically in accordance with a deed of trust. The deed will usually identify an appointor with the ability to remove and appoint trustees and beneficiaries. A company or an individual can be either a settlor, trustee, beneficiary or appointor.
6. A discretionary trust confers discretions (usually on the trustees) over whether to distribute particular trust assets or income, and if so, to whom. Beneficiaries do not have decision-making rights in the trust. Beneficiaries in a fixed trust have defined entitlements to capital or income.
7. The key advantage of a trust is flexibility over many decisions, particularly to allocate capital and income. Trusts can also obtain many of the advantages of a company (para 4) by appointing a company to be the trustee.
8. A company can receive funds by way of a loan, share capital or a gift. The first two require the underlying contract to specify the rights of the company and the funder in terms of interest, dividends and repayment. A trust will typically receive funds as a loan or as a gift. Unit trusts replicate the share security by way of units.

Governance

9. Governance is about ensuring that directors, trustees and managers pursue the interests of the beneficial owners. In a standard company, governance is often focused on directors, whereas the concept is broader. Governance can be explained by reference to the economic concept of principal and agency, which is broader than the legal concept. An economic agent should pursue the objectives and interests of their principal(s). The shareholders are the principals of their directorial agents who are in turn the principal of their managerial (or executive) agents. This is a simplification of the fact that the principals are often pluralistic and diverse, which requires decision-making and voting systems to address.

10. Effective governance and operations essentially require people with the right skills and integrity. Many organisational elements are necessary to align the interests and actions of principals and agents, such as culture, leadership, rewards, effective structures, rules, policies, performance reporting, accountabilities, and audit.

Specialist Committee's

11. Both companies and trusts can establish supporting committees to advise either the governors or the management. Those committees can be standing or episodic. They can be drawn from any stakeholder segment, such as customers, suppliers or staff.

Strawman (an illustration)

12. E Tipu e Rea operates via a charitable trust with a corporate trustee. Its governors are directors of the corporate trustee. This provides a corporate governance framework if a board of directors with a Chairman supported by a CEO operating alongside a charitable trust.

Professional Advice

13. It is most likely you will need professional assistance from a lawyer, an accountant and possibly an auditor. This is because you will have contracts to complete, financial statements and tax returns to prepare and audited and NZ law to comply with. Your funding contracts will impose these kind of requirement as well as your own organisational policies. The contract with Ministry of Education is regulated by section 158D of the Act.
14. In general, a non-profit school should not be subject to income tax. That will be reinforced if the school operates as a charity. A 'for profit' school is prima facie subject to income tax. All schools should be able to register for GST which will be worthwhile if expenses exceed receipts. This is an area amongst others where tailored professional advice is needed.

For questions or queries please contact:

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