



5. FACT SHEET ON RELATIONSHIPS BETWEEN NATIONAL, BRANCH AND LOCAL OFFICES

This fact sheet identifies and describes three types of relationships possible where an organisation is part of a larger organisation. They are the national association structure, branch structure and local committee structure.

THREE MAIN TYPES OF STRUCTURES

Whatever the legal form of your organisation (incorporated society or charitable trust board, for example), it may also be part of a larger national or other organisation. The three main types of structures are as follows:

National association structures

These have three key characteristics:

- There is an incorporated national body.
- They have one or more separately incorporated local branches.
- Their branches are members or shareholders of the national body. This characteristic distinguishes a national association structure from a branch structure.

Branch structures

These have three key characteristics:

- There is an incorporated national body.
- They have one or more separately incorporated local branches.
- Their branches are not members or shareholders of the national body. This characteristic distinguishes a branch structure from a national association structure.

Local committee structures

These have two key characteristics:

- There is an incorporated parent body.
- They have one or more unincorporated committees operating locally.

RULES AND CONSTITUTIONS

For a clear understanding of the relationships between national, branch and committee structures and of each component's obligations and liabilities, read the rules or constitutions of each body.

The Societies and Trusts Online website at www.societies.govt.nz provides access to the rules or constitutions of all incorporated bodies.

MANAGEMENT

National association and branch structures

National control over branches

In a national association or branch structure, the committee of the national body does not have an automatic right to be involved in managing its branches. If the purpose of the national body is to act as a regulator of its branches, the branches' rules or constitutions should allow the national body to give directions to the branches.

Management and administration at branch level

The rules applying to branches of incorporated societies are mostly the same as the rules applying to incorporated societies generally, although there are some special provisions in the Incorporated Societies Act 1908 relating to the administration of branches.

The Incorporated Societies Amendment Act 1920 sets out the procedure for incorporating branches of an incorporated society. There is no provision under the Charitable Trusts Act 1957 for the incorporation of branch societies.

Branch control over national body

The committee of a branch in a national association can exercise some limited control over a national body as a member and shareholder. But in both national association and branch structures, the committee of a branch does not have an automatic right to be involved in managing the national body at committee level. To achieve this, the national body's committee should consist of representatives of each of the local branches.

Local committee structures

A local committee is usually constituted under the rules of its national body. The extent to which the rules of national bodies govern the management and procedures of local committees varies.

Management and administration at local level

A local committee may have its own rules for the management of the committee and its procedures,

provided there are no conflicting provisions in the parent body's rules.

National control over local committees

If the national body's rules cover the management and procedures of the local committee, the local committee cannot override those rules by making contrary rules of its own. The local rules can exclude managerial oversight by the national body only if the national body's rules contain no conflicting provisions.

Given the extent to which a national body can be bound by and held liable for the actions of its local committees, it is best practice that the rules of all national bodies that operate local committee structures should explicitly provide for the national body to have managerial oversight of the local committees.

CIVIL AND CRIMINAL LIABILITIES

Liability in national association and branch structures

A branch is not liable for any civil or criminal penalties that are awarded against the national body unless:

- the branch was a joint perpetrator in the acts or omissions of the national body that resulted in the penalty, or
- the branch has agreed to indemnify the national body, or the branch rules require it to do so, or
- the branch later ratifies the act or omission of the national body in question.

The same rule applies to the national body's liability for civil or criminal penalties awarded against a branch.

Liability in local committee structures

A parent body will generally be liable (usually jointly with the members of the local committee) for any wrongful acts that the local committee does on the national body's behalf.

A parent body may be able to exclude or limit its liability for civil penalties (such as damages for negligence) resulting from a local committee's actions, by including an exclusion or limitation of liability clause in the national body's rules. However, these clauses may not always be effective in protecting against liability, particularly when the person committing the wrong and the person claiming the protection of these clauses are part of the same organisational structure.

A national body should ensure that it monitors the actions of its local committees properly, to reduce the risk of incurring civil or criminal liability.

CONTRACTS

National bodies and branches are incorporated bodies and are therefore able to enter into contracts in their own right. Local committees, which are not incorporated, cannot do this and must instead enter into contracts in the names of their members.

See *Fact sheet 18: Contracts*.

POWER TO HOLD PROPERTY

National bodies

A national body is usually incorporated and may therefore hold property in its own right. Any property that is transferred or left to the national body in a will may be dealt with as the national body chooses, according to its rules and any applicable legislation.

Each branch has influence over the property only to the extent that it can exercise management rights over the parent body. Unless the national body holds the property on trust, the property will be available to be distributed to creditors if the national body is liquidated.

Branches

Branches in national association and branch structures are incorporated and may therefore hold property in their own right. Any property that is transferred to a branch, or left to a branch in a will, may be dealt with as the branch chooses, according to the rules of the branch, the Incorporated Societies Amendment Act 1920, and the terms on which the property was transferred or gifted to the branch.

The national body has influence over the property only to the extent that the national body has management rights over the branch. Unless the branch holds the property on trust, the property will be available to be distributed to creditors if the branch is liquidated.

Local committees

Because a local committee is not incorporated, any property transferred or left to it in a will will be owned by the people who are the committee members at the time. The property will then be dealt with according to the committee's rules.

This poses a risk for the national body if the committee is not subject to any formal rules, or if the committee's rules can be changed without the national body's consent. The committee members could potentially deal with the property for their own benefit and neglect the purposes of the organisation. To prevent this happening:

- ownership of the organisation's property should be restricted, as far as possible, to incorporated bodies that are controlled by the national body
- the amount of property held by local committees should be kept to a minimum
- any local committee holding property should be subject to a rule that the property can only be dealt with to further the purposes of the organisation.

RESOURCES

Fact sheets

Fact sheet 2: Unincorporated groups

Fact sheet 18: Contracts

Websites

www.charities.govt.nz

The Charities Commission is responsible for registering charities. The website provides more detailed fact sheets on the registration process.

www.community.net.nz

The "How-to Guides" section has a community development resource kit covering all aspects of establishing and running an organisation.

www.dia.govt.nz

The Department of Internal Affairs has information about administering lottery grants and community grants schemes.

www.ird.govt.nz

Inland Revenue's website has information on not-for-profit groups. Download a copy of the brochure *Smart business – An introductory guide for businesses and non-profit organisations* (IR320).

www.lawaccess.lsa.govt.nz

This website offers a catalogue of law-related information resources, with over 140 New Zealand organisations listing their resources on the site.

www.lsa.govt.nz

The Legal Services Agency has information on community law centres throughout New Zealand.

www.societies.govt.nz

Societies and Trusts Online provides an information library with forms and fact sheets. It enables incorporated societies to maintain organisational details and provides access to a register of incorporated societies and charitable trusts.

www.tpk.govt.nz

Te Puni Kōkiri's website has information on effective governance.

Publications

Von Dadelszen, M – *Law of Societies in New Zealand* (2000, Wellington, Butterworths)

Von Dadelszen, M – *Members' Meetings in New Zealand*, 2nd ed (2004, Wellington, LexisNexis)

