

McLaughlin Law

MMF CHECKLIST FOR BAND AGREEMENTS

Introduction

A Band Agreement is an agreement between members of a band with respect to how they are going to run the affairs of the band, either generally, or just in relation to certain issues. There is almost no limit to the number of the issues that can be covered in a band agreement but in any case it must be ensured that the band agreement reflects in practice how the band runs or the band members want things run. If there are any fundamental changes in this regard over time then the band agreement should be updated to reflect these changes

From a manager's perspective band agreements are important things to make sure that your bands have in place, that such agreements are well drafted and that they are well understood. After all, any issues that arise amongst band members that affect or hamper the band's ability to go about its business and earn income will have a direct knock on effect to the actual amount of commission which in turn flows through to the manager. Also when disputes erupt amongst band members it is usually the manager that is seen as initially responsible for helping to resolve the situation. As this is often no easy task, having a band agreement in place that may provide some answers or at least some guidance in resolving any such disputes, can be a big help.

The legal structure that a band is run through will also affect the issues that need to be covered in a band agreement. For instance although the practical issues will always remain the same, if a band runs its business through a limited liability company then consideration will also have to be given in the band agreement to the ownership of shares and directorships in respect of the limited liability company.

The Agreement

- *Band Name:* If ownership of the band name is not just to be split between all band members who are a party to the band agreement then these more specific rights in the band name that one or more band members may have should be clearly provided for. Further limits on the use of the name by individual members may also be provided for, such as in the case of when a member leaves the band.
- *Entering Contracts:* It should be agreed that no individual band member can commit the band to contractual arrangements without the prior knowledge and consent of the other band members (or a majority, depending on the agreed decision making process).

- *Band Members' Obligations:* Each band member's role within the band including any specific responsibilities such as with regard to arranging promotion for gigs or maintaining the band's website and social networking sites should be specified, so everyone is clear on what their role is.
- *Decisions:* Any decision made regarding the affairs of the band should not be carried out without a specified majority, e.g. 50% of the band members. Some decisions, particularly financial ones, may even require unanimous agreement, e.g. borrowing money in the name of the band or incurring expenditure in excess of a certain amount. A right to veto by a certain band member or members may also be considered.
- *Ownership of Copyright:* If there is a set formula that the band wants to apply to determining the copyright ownership percentages in any songs written by the band this should be specified.
- *Band Assets:* Who will own recordings and videos paid for by the band should be clearly set out and also who will own the rights to any domain names the band may have registered. Although such ownership will generally vest in the partnership or company the band is operating through, issues can begin to arise in respect of ongoing ownership when one member leaves the band.
- *Profits:* The basis on which the income generated by the band is to be split between the band members should be made clear. It may be agreed that profits are to be re-invested back into the band, or alternatively band members may prefer to keep their share of any profit for their own use. Provision should also be made to deal with the situation of leaving members' ongoing entitlement to profits made by the band, particularly if such leaving members have previously agreed for their portion of the profits to be re-invested into the band.
- *Loans:* How any band member that loans money to the band is to be repaid should be clearly set out. Also it should be clarified in such a situation where a loan is provided to fund the making of any recordings by the band, whether the intention is that the band member making the loan will become the owner of such recordings as opposed to the recordings being owned by all the band members jointly.
- *Expenses:* It should be clarified if there are any personally incurred expenses of the band members that will be reimbursed from the income of the band. For instance new drum sticks or guitar strings. The conditions on which such reimbursement will be made should also be detailed, including whether specific invoices and receipts have to be provided.
- *Equipment:* Band members' rights when they leave the band in respect of equipment bought with band income they helped generate should be addressed.
- *External Performances:* It is prudent to provide if any band member wishes to perform or record independently or other than in the band whether they need to obtain the consent of the other band members and if not, if there are any general conditions that are to apply to such external side projects.
- *Rehearsals and Commitments:* All band members should agree to attend the rehearsals, performances, promotional events and recording sessions required or give appropriate notice if they can't.

- *Termination:* How much notice a band member has to give if they wish to retire from the band will need to be addressed. It should also be specified what the process will be if a majority of band members determine that one member should cease to be a member of the band.
- *Incoming Band Members:* All new band members on joining the band should be required to become a party to the current form of the band agreement.
- *Accounting:* It should be provided that proper accounting records are kept and someone is given the responsibility for ensuring this occurs. Such accounts should be able to be inspected by each band member if they wish.
- *Bank Account:* Provision should be made to set up a bank account, with at least two band members named as signatories.
- *Independent Advice:* Each band member should acknowledge that they been advised and encouraged to seek expert independent legal advice on the contents of the band agreement prior to signing.
- *Boilerplate Clauses:* It is also important that the band agreement has certain standard legal provisions that ensure the legal mechanics of the agreement are appropriately provided for. Examples of some these necessary types of clauses are a dispute resolution process, provisions that clarify the agreement represents the entire agreement between the parties and that if any provision of the agreement is found to be unenforceable or illegal then it will not affect the rest of the Agreement.

If you require any further information in respect of this checklist or wish to arrange for the drafting of an appropriate band agreement for you or any artists you manage please don't hesitate to contact David McLaughlin at McLaughlin Law (Phone 09 282 4599, Email: david@mclaughlinlaw.co.nz, Web: www.mclaughlinlaw.co.nz)

Disclaimer

This information is intended to provide a general outline of the relevant legal issues and further professional advice should be sought before any action is taken in relation to the information contained in this checklist.