

*International Bar Association  
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*Committee N*

*Tax Planning and Pitfalls for  
International Entertainers  
Case Study: U.S. Perspective*

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**Outline of Comments  
to the General Structure of the Contract  
Which is the Basis of the Case Study**

Following the enumeration in the points of agreement set out in the case study, there is set out below certain observations regarding the general structure of the contract which is the basis of the case study.

1. Place of Performance.

a. It is assumed that the contract would specify each of the cities in Country S in which the performances are to take place, as well as the order of such performances.

b. It is also assumed that the contract would specify the proposed venues (i.e., the identity of the arenas) and the proposed dates of each concert.

c. Ordinarily, the contract would specify the seating capacity of each venue as well as the technical requirements of each venue (e.g., the number of seats which cannot be sold because of staging and other technical requirements).

d. Ordinarily, the contract would specify the proposed start time for each performance and the minimum duration of the presentation.

e. If in addition to the lead performer, side musicians or other acts are to be included, the contract would specify the other act(s).

2. Performance Fee.

a. The contract should specify when the performance fee is to be paid and how payment of such fee is to be secured.

b. In many instances the fee is made up of a fixed minimum component of which a significant portion is payable (or otherwise adequately secured) prior to the performance (with respect to which see below), and a contingent portion which customarily is a percentage of and is computed by reference to box office receipts over a threshold. If box office receipts are to be a factor in determining the fee, the term box office receipts must carefully be defined.

c. In certain instances, the contingent portion of the payment is a percentage of the promoter's net receipts from the show.

d. In any case where there is a contingent portion of the fee, provisions are required for accountings and settlement.

e. In any case where a portion of the fee is to be paid in advance of the performance, provisions should be made to ensure that such advance is not paid out of advance ticket sale revenue which, of course, would be returnable in the event the performance did not occur. The concern is that the performance does not occur because of the promoter's fault, that the public is entitled to a refund, and that the promoter is not in a position to refund the ticket revenue, and that redress would be sought from the performer.

3. Musician Costs. No comment.

4. Technical Costs. The contract should specify the responsibility of each party for costs. For example, to the extent the sound and light costs are costs to be borne by promoter, the E20,000 would not be a reimbursement but rather would be a cost of promoter. Since, in certain circumstances,

whether an amount is a reimbursement may have tax significance, this issue needs to be addressed.

5. Broadcast Rights. This point deals with so-called ancillary rights. It appears that under the contract in question, promoter would be granted the right to simulcast or delay broadcast one or more shows.

a. The contract might be clarified to specify that the required payment would be due whether or not promoter were to exercise its rights. Thus, the payment would be payable for the right to simulcast or broadcast, with additional payments required possibly if there were more than X number of broadcasts.

b. Alternatively, the contract ordinarily would limit the number of broadcasts which were to be permitted and that in any event ownership of audio or visual tapes would revert to Starco.

c. The contract ordinarily would reserve to Starco or its designees the rights to record or film the performances (at its own cost), that Promoter would use its reasonable best efforts to cause the venue to permit such recording or filming at no additional cost, and that Starco would own such recording or film.

6. Reimbursements. See discussion above.

7. Sponsorships. It should be noted in passing that the 20% fee seems unusually low; however, this may be a function of overall profitability of performances. In any event, the contract would ordinarily specify whether so-called "meet and greets" or other services or endorsements of the performer were required; and if so, the number, etc.

8. Breach. The cancellation provision seems unusual. Ordinarily a contract will require the full payment of the fixed fee in these circumstances. See comments above regarding advances and security.

9. Securitization. The reference to securitization is somewhat puzzling. The term securitization in the context of musical rights generally describes a loan secured by the revenue stream from a pool of intangible assets over which the lender has a first security lien. The lender may then sell-off its loan position publicly or to a private group of investors. However, ordinarily for investors to make a secured loan, the security (i.e., the right to the revenue stream) must already exist. In the case of a concert tour, even if there were minimum fees which were adequately secured, there would be no right to the revenue stream absent the performance. Accordingly, a securitization may well be problematic unless coupled with adequate insurance that the performance will take place (e.g., non-appearance insurance), and a secured personal guaranty of the performances for cases not covered by insurance (e.g., failure to perform due to artist fault).