3. Setting up: Legal aspects

Setting up: Company Formation

Brief introduction to business law; duties of Directors

Shares, stock options, profit share schemes and the like

IPR
Company formation

Legal entity

Purchase
- Solicitor
- Agent (website)
- Mem and Arts; Objectives; Share conditions

Company books
- Minute book: initial resolutions
- Appointment of Bank, Auditors, insurance
- Employee handbook
Company formation 2

Register company, directors and shareholders

Register for tax

Register as employer

Find a pension provider

Register with ICO
Details

Premises

Phone and internet

Letterhead (with company number)

Accounts and accounting system

Purchasing system; Contracts

Asset control
More details

Insurance
Recruitment
Furniture
Equipment
Planning

Budget
  Keep track of your resources

Project Plan
  What are you going to do and when

Quality Plan
  how are you going to know you’ve built the right thing

Marketing Plan
  how are you going to reach your market and enable them to reach you
Brief introduction to the duties of Directors

Ensure solvency
Maintain fiduciary duty to shareholders
Ensure the business complies with all applicable laws

- Companies Acts
- Financial Services Act
- Shops Offices and Premises Act
- Discrimination Acts
- Data Protection Act
- Taxes: VAT, ACT ….
- Etc, etc, etc

There are books and courses available - IoD
Brief introduction to the duties of Directors

Companies Act 2006 - codified seven duties
- Act within their power to abide by M&A and Shareholder Decisions
- Promote the success of the company
- To exercise independent judgement
- Exercise reasonable care and skill
- Avoid conflicts of interest
- Not to accept benefits from third parties
- Declare an interest in a proposed transaction with the company
Shares and share structure

Shares govern ownership of the company:
- Distribution of control
- Distribution of capita
- Distribution of profits (dividend)

Shareholders agreements
- Pre-emption rights
- Tag-along / Drag-along and anti-dilution clauses
- Appointment of Directors

Preference Shares
- Liquidation ration

Taxation issues
- EIS relief
Control

Normal limited company under Table A of Companies Act 1985 if incorporated before 1 Oct 2009 afterwards Companies Act 2006 Model Articles

- 25%+ Blocks “Substantive” resolutions
- 50%+ Day to day control
- 75%+ Absolute control - but must respect the rights of minority shareholders
Stock option scheme

Agreement to sell shares at fixed price
  Part of renumeration package
  Recruit and motivate key staff

Relevant for high growth companies
  In a large company problem to make scheme relevant to work done
  Exit route

Balance advantages to company and staff
  Nominal (par) price
  4 year monthly accrual; 1 year cliff
  Lock in as employee

Tax implications
Other remunerations

Profit share

Commissions (paid when?)

Pension scheme

Car (bike hire purchase scheme)

Discretionary budgets, sabbatical and training programmes
IPR

Intellectual Property Rights

Patent
Copyright
Trademark
URL
Design right
Registered Design
Database right
Trade Secret
Plant Breeders rights
Patents

Absolute right to invention

Bern convention

Expensive: need professional advise
  - separate jurisdiction

Must be
  Novel
  Reducible to hardware

Provisional Patent:
  low cost
  one-year
  can be challenged
Undesirability of Patents

Expense
- £3k first application
- £10k grant
- £100k international filings
- £1m to defend

Network effect
- Bio vs tech
- Utility increases with square of users
- Standard

Timescale
- Moore’s law

Untimely Publication
Undesirability of Patents  cont.

Hard to administer

Typically
- tech has many weak patents
- ways around invention
- Bio-tech has strong patents

Conclusions
- Usually defensive rather than offensive for tech
- Be very selective
- Handy for bean counters (and investors), but can suppress innovation
Trademarks

Right to exclusive use of name or mark
- register by classes of goods
- local jurisdiction
- in USA use must be shown

Company name does not imply trademark
Copyright

Copying prohibited
- but not re-invention
  - “clean-room” clones
  - Techniques: include nonsense signatures

Self-declarative
- Copyright <year> <author>
  - library rights
  - include statement of rights (e.g. backup)

FAST
Internet and Copyright

Overextension of Copyright
- 70 years from death of Author
- DRM etc

“Fair Use” text only
- “Deep linking” other than through main page
  - probably ok but
    - Germany Paperboy case
    - US: Ticketmaster vs Microsoft
    - UK: Shetland Times vs Shetland Chronicle in the UK

- “Direct Linking” eg directly linking in another’s picture without permission NOT OK

- Search Engines
  - Still ongoing
Internet Issues

Legality of Encryption

Signatures and contracts
  Jurisdiction
  Audit trails
  Liability

Domain names

“Fair use” and copies
Contracts

Complex law
- exchange of value
- fairness

Signatures
- Problem for Internet
- TTP’s, CA’s
  - Trust and Liability
- Signifying assent
  - But can you prove it?
  - Audit trails
Contracts … cont

Making the contracts you want to make, and avoiding the commitments you don’t want to accept

Mechanics
- Offer and acceptance
  - Offers to treat
  - Writing and signature

- Incorporating terms

One world?
- Applicable law
- Place of litigation
- Enforcement of foreign judgements
- Arbitration
Tort

Avoiding infringements of the rights of others, and giving adequate notice to others of your rights that you may want to enforce

Defamation - Derogatory statements you cannot prove true, or linking to others’ statements

Negligence - Careless advice causing injury or (sometimes) loss

Copyright - making derivative work, publishing others work

Trademarks - taking others reputation, domain names, metatags, inlining, marking

Patents - novel non-obvious inventions, scope differences US/UK/EU
Tort

Complying with regulations, so as to avoid penalties, so that your rights are enforceable

Consumer Contracts Regulations 2014
- Consumer Protection (Distance Selling) Regulations 2000 for contracts up to 12 June 2014
- Detailed rules on content of “selling” webpages

Data Protection Act 1998
- ICO, need to register, “fairness” may require opt out

Consumer Credit Act 1974
- Amended by Consumer Credit Act 2006
- Formalities for credit agreements, cooling off period
- Financial protections for cardholders

Special cases
- share dealing, insurance, banking, gambling, prescription drugs, pornography, tobacco, alcohol, fireworks, guns, etc.
- Radtio Spectrum Consumer protection (CE), HSE …
- Value Added Tax (especially import and export)