

# Business Studies

## L3 - Legal Aspects, Contracts and Copyright

Jack Lang and Stewart McTavish

# 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 remuneration 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
  - **Standards** (Consumer Rights Act 2015, previously Sale of Goods Act 1979 and Supply of Goods and Services Act 1982)
  - **Implied Terms** (Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contracts Regs 1999)

## 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.
- Radio Spectrum Consumer protection (CE), HSE ...
- Value Added Tax (especially import and export)