

Business Studies

L3 - Legal Aspects, Contracts and Copyright

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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)