

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 culture and Management Theory

Company formation

- Legal entity:
- Purchase:
 - Solicitor
 - Agent: e.g. Jordans
 - Mem and Arts; Objectives; Share conditions
- Company books
 - Minute book: initial resolutions
 - Appointment of Bankers, Auditors, insurance

Details

- Premises: Serviced offices/ Lease/ Purchase
- Phone
- Net
- Letterhead (with company number)
- Accounts and accounting system
- Purchasing system; Contracts
- Asset control

More details:

- Insurance
- Recruitment
- Furniture
- Equipment

Plans

- Budget
- Project Plan
- Quality Plan
- Marketing plan

Brief introduction to duties of Directors

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

Shares and share structure

- Shares govern the ownership of the company:
 - Distribution of control
 - Distribution of capital
 - Distribution of profits (dividend)
- Shareholders agreements
 - Pre-emption rights
 - Tag-along/Drag-along and anti-dilution clauses
 - Appointment of Directors
- Preference Shares
 - Liquidation ratio
- Taxation issues
 - EIS relief

Control

- Normal Limited company under Table A of Companies Act 1985
 - 25%+ Block “Substantive” resolutions
 - 50%+ Day to day control
 - 75%+ Absolute control - but must respect the rights of minority shareholders

Stock option schemes

- 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
 - Profit share schemes
 - 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

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
 - Seperate jurisdictions
- Must be
 - Novel
 - reducable to hardware
- Provisional Patent:
 - low cost,
 - one-year,
 - can be challenged

Undesirability of Patents

- Expense
 - 3K first application
 - 10K grant
 - 100K international
 - 1M+ to defend
 - Thermo nuclear stand-off
- Network effect
 - Bio vs tech
 - Utility increases with square of users
 - Standards
- Timescale
 - Moore's Law
- Untimely Publication
- Hard to administer
 - No large IPR collection has ever worked
 - E.g NRDC, IBM, Gemstar, University
- Typically
 - Tech has many weak patents
 - Ways around
 - Bio-tech has strong patents
- Conclusions
 - Defensive rather than offensive for tech
 - Be very selective
 - Handy for bean counters, but suppress innovation

Trademarks

- Right to exclusive use of name or mark
 - 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 (e.g. Mickey Mouse)
 - DRM etc
- “Fair Use” text only
 - “Deep linking” other than through the 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 undecided; Kelly v. Arriba Soft Corporation
 - Implicit permission by omitting the NOINDEX tag

Internet Issues

- Legality of Encryption
 - Fight for your rights!
- 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

- *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
 - Sale of Goods Act 1979
 - Supply of Goods and Services Act 1982
 - Implied terms
 - Limits
 - » Unfair Contract Terms Act 1977
 - » Unfair Terms in Consumer Contracts Regulations 1999
<<http://www.hmso.gov.uk/si/si1999/19992083.htm>>
- One World?
 - Applicable law
 - Place of litigation
 - Enforcement of foreign judgments
- Arbitration

Tort

- *Avoiding infringement 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
 - Linking to others= statements
- Negligence
 - Careless advice causing injury or (sometimes) loss
- Copyright
 - Making derivative work
 - Publishing others work (linking)
 - Asserting your own claim: © Nicholas Bohm 2001
- Trademarks
 - Taking others reputation
 - Domain names, metatags, framing, inlining
 - Marking: ®, ™, narrative
- Patents
 - Novel non-obvious inventions
 - Scope differences US/UK/EU
 - Cost

Regulations

- *Complying with regulations*
 - *So as to avoid penalties*
 - *So that your rights are enforceable*
- Distance Selling
 - Consumer Protection (Distance Selling) Regulations 2000
 - www.hmso.gov.uk/si/si2000/20002334.htm
 - Detailed rules on content of “selling” web pages
- Data Protection
 - Data Protection Act 1998
<www.legislation.hmso.gov.uk/acts/acts1998/19980029.htm>
 - Information Commissioner: <www.dataprotection.gov.uk/>
 - Need to register
 - “Fairness” may require opt out
- Consumer Credit Act 1974
 - 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 & export)

Management

- Goal setting
 - Overall direction
 - Measures of success
 - Strategy rather than tactics
- Culture lead
- Communication

Management Theories

- “7 people is a natural hunting group”
 - Company growth break points: 7, ~50, 350...
- Classical/Hierarchical
- Human Relations

Classical

- Formal and rational approach
- Focus on STRUCTURE of organisation
- Tasks reduced to simple elements ->boring and repetitive
- Assumptions that individuals primarily motivated by PAY

Management Tasks - Classic model

- Henri Fayon
 - Objectives
 - Forecasts
 - Planning
 - Organising
 - Directing
 - Co-ordinating
 - Controlling
 - Communicating

Management Tasks - Classic model

- F W Taylor
 - All knowledge should be recorded
 - Scientific selection and progressive development of workforce
 - Work for maximum output
- Frank and Lilian Gilbreth
 - Time and Motion study
 - Introduced rest periods
- Henry Gantt
 - Gantt Chart
 - replaced piece rate with day rate and bonus

Human Relations

- Consider individuals
 - social needs
 - motivation
 - behavior
- Focus on WORK done

Theory X and Theory Y companies

- Mc Gregor
 - Theory X: traditional hierarchical structure
 - Stick
 - Autocratic
 - Theory Y: People oriented
 - Carrot
 - Participative

Theory X

- People don't want to work, they have to be made to do so
- People must be coerced, controlled, threatened
- Hierarchical structure, Defined roles, task oriented, little job flexibility
- Poor communication, status demarcations - "Them and us"
- Slow to change or adapt
- Traditional e.g. armed forces, smoke stack industry

Theory Y

- People want to work, but are prevented from doing so
- They will exercise self-control when committed to common objectives
- Accept and seek responsibility
- Flat management structure (e.g Matrix)
- Good communications, little status
- People oriented: Flexible work teams
- Adapts well to rapid change
- Most modern computer companies