

# 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](http://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](http://www.legislation.hmso.gov.uk/acts/acts1998/19980029.htm)>
  - Information Commissioner: <[www.dataprotection.gov.uk/](http://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