

ESTABLISHMENT OF A BUSINESS WITH OTHERS

Business plan

Before taking steps to set up the business we strongly recommend that you write a business plan, i.e., a summary of your aims and how you plan to achieve them. The business plan should include at the very least:

1. A statement of your aims, in terms of (for example) turnover or market share and a timetable for their achievement.
2. A summary of your market research results (covering, for example, products, suppliers, competition and market size).
3. A sourcing, marketing, advertising and distribution plan.
4. A summary of the resources that will be required (e.g., staff, know-how, stock, equipment, premises, etc.).
5. A budget and a cash flow forecast, based on known and foreseeable costs, anticipated revenue and available or planned sources of finance.

Whether or not you plan to borrow money for the venture, we suggest that you write the plan as if it is to form the basis of an application for capital or loan funding. You may require help from your accountant to establish a budget and cash flow forecast.

Choice of business structure

If required, we can advise you on the main alternative business structures which you may adopt for your organisation, namely a partnership, a trust or a company. The most important distinguishing features of these alternatives are:

1. The way your shares in the venture are defined.
2. Control of operations and voting on decisions.
3. Limitation of your liability to the public.
4. Taxation considerations (particularly income tax and capital gains tax).
5. Funding of the venture (having regard to taxation issues).
6. Statutory record keeping requirements.
7. Set up and running costs (including filing fees and taxation returns).

Please let us know if you require further advice or information.

Matters to be settled before set-up

We attach a list (in summary form) of the major issues you should discuss and agree

on when working out how to set up your business (whether you choose to set it up as a partnership, a trust or a company). Please note that whatever you agree can be expressed on the basis that it is subject to later alteration by agreement either generally or on a case by case basis.

There may be other points of detail that you will need to consider, but if you work through this list, it should give you a good foundation. Please bear in mind that not all the items will necessarily be relevant - it depends on how the overall structure develops.

CHECKLIST: ESTABLISHMENT OF A NEW BUSINESS

This checklist lists basic information required for establishment of a new business. It is not necessarily complete, as particular circumstances may require different/extra information. Some of the questions may require our advice for proper interpretation and response. If you would like us to assist you with the establishment of your business, please complete the checklist (so far as you can) and send it to us.

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| 1. What is the business to be called? | |
| 2. What are to be the objects of the business? | |
| 3. What type of business is to be carried on? | |
| 4. Are there to be any restrictions on the type of business to be carried on? | |
| 5. Where is the business to have its registered office? | |
| 6. Where is the business to have its principal place of business? | |
| 7. Who is to be responsible for obtaining and holding of any necessary licences, including planning approvals for premises? | |
| 8. What staff will be required? | |
| 9. What equipment will be required? | |
| 10. What working capital will be required? | |
| 11. What other resources will be required? | |
| 12. How are existing tangible assets to be valued and made available to the venture? | |
| 13. How are existing intangible assets (such as know-how and research results) to be valued and made available to the venture? | |
| 14. What will be your respective areas of responsibility/duties? | |
| 15. What specific roles will each of you take (e.g., as chairman, managing director, secretary, public officer, | |

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| etc)? | |
| 16. How will decisions be arrived at (including procedure for calling and holding meetings, quorum, chairmanship and voting rights)? | |
| 17. What is to happen if the participants are deadlocked on any issue? | |
| 18. What salaries and other benefits will you provide for yourselves (i.e., employment terms)? | |
| 19. What are to be your respective contributions to and shares in the capital and property of the venture? These may include, for example: (a) Valuation of prior work and other tangible and intangible assets which you now put into the business; (b) The different classes of shares to be issued (if applicable) and the rights attaching to them; (c) The proportions in which shares in the business are to be held by each of you; and (d) When your respective contributions (in cash or in kind) are to be made. | |
| 20. How is initial and additional funding (working capital) is to be raised when required (e.g., from your own resources or by bank borrowings or overdraft)? | |
| 21. What security for borrowings will each participant be required to give (e.g., personal guarantees, mortgages over property)? | |
| 22. How are participants' loans to the business to be treated (e.g., when/in what circumstances are they to be repayable and are they to carry interest)? | |
| 23. What is to happen in case of inequality of such loans? | |
| 24. How are surplus funds of the company to be invested? | |
| 25. What is to be the policy regarding | |

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| distribution of profits, e.g., how much is to be distributed or retained (but note that there may be adverse tax consequences of retention) and frequency of distributions? | |
| 26. What are to be the rules on drawings (i.e., how much each of you can draw in advance of declaration of a distribution of profits)? | |
| 27. Is interest is to be paid on loans you make to the venture (or profits you do not draw)? | |
| 28. What are to be the rules regarding repayment of loans or payment of deferred drawings? | |
| 29. What are to be the business' banking arrangements, including the number and combination of signatories required to operate bank accounts? | |
| 30. What arrangements are to be made for keeping of accounts, audit and preparation of tax returns? | |
| 31. Who will be responsible for compliance with statutory obligations (i.e., company secretary for Corporations Act purposes and/or public officer for taxation purposes)? | |
| 32. What are to be the general rules (i.e., constitution or partnership rules) that are to govern the internal administration of the business so far as not covered by items mentioned above? | |
| 33. What restrictions (if any) are there to be on, e.g.: <ul style="list-style-type: none"> (a) Changes to the rights attaching to the participants' shares in the business; (b) Issue of new shares/transfer of shares and/or the introduction of new participants; (c) Pledging of your respective interests in the business as security for private borrowings; (d) Hiring and firing of staff; | |

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| <p>(e) Ordering goods or services;</p> <p>(f) Personal benefits such as salaries, loans from the business and superannuation contributions.</p> | |
| <p>34. In what circumstances is the venture to be liquidated?</p> | |
| <p>35. What are to be the consequences of liquidation (e.g., rights to acquisition of assets of the business)?</p> | |
| <p>36. What is to be the method of valuation of goodwill on termination of partnership (if applicable)?</p> | |
| <p>37. Which firms are to be appointed as accountants, solicitors and/or other professional advisors to the business (as opposed to the participants' personal advisors)?</p> | |