



Preparing for Directorship

Michael Buckworth
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Enterprising
Futures atLSBU

BUCKWORTHS

**Preparing for
directorship;
running a start-up
and market
trading**



About Michael Buckworth

- Worked at two top tier New York firms
- Founded Buckworths in 2011
- Advised over 1,600 start-ups in a range of sectors
- Investor in 52 start-ups
- Entrepreneur in Residence at LSBU, UCL and guest lecturer at LSE
- Author of Amazon Bestseller, “Built on Rock”



What are we covering?

- What is corporate governance and why is it important?
- Legal structures
- Constitutional documents
- Directors' duties
- Liability for breaches and how to protect yourself
- Intellectual property rights
- Managing risk through contracts
- Team incentivization
- Market trading



What is corporate governance?

“Good quality, ethical decision-making builds sustainable businesses and enables them to create long-term value more effectively.”

Corporate Governance Institute UK

What is it?

- The way in which companies are governed and to what purpose
- Who has power and accountability, and who makes decisions
- A toolkit that enables management to deal effectively with the challenges of running a company and stakeholders to hold management accountable

Why is it important?

- Companies have multiple stakeholders: shareholders/investors, employees, suppliers, customers and the local community
- The interests of these stakeholders must be balanced if the company is to achieve its objectives whilst retaining the trust of stakeholders

What does good corporate governance entail?

- Compliance with legal obligations
- Compliance with ESG requirements
- Compliance with processes and procedures



Legal Structures

For Profit

- **Company limited by shares**
 - Most common structure for a for profit business
 - Two sources of power: directors and shareholders
- **Limited liability partnership (LLP)**
 - Generally used only for professional services businesses & in structured finance
 - Managed by designated members who are accountable to the members
- **Sole trader**

Not for profit/social enterprise

- **Company limited by shares**
- **Community Interest Company (CIC)**
 - Essentially a standard company limited by shares with an asset lock to prevent excess profits & assets being distributed to owners
- **Company limited by guarantee**
 - This entity has no shareholders and so no owners. Therefore no way to pay out profits.
 - Managed by directors with accountability to guarantors
- **B Corp**

Things to consider

- What are your objectives in setting up a business?
- How much control do you want over decision-making?
- How will you finance the business?
- What are the tax implications of a structure?
- What does exit look like?



Constitutional Documents

What are they?

- Governing documents of a company
- Set out the scope within which the company operates
- Any action outside the scope of the constitutional documents is *ultra vires* i.e. void in its entirety

For a company

- Memorandum of association – for Companies Act 2006 companies, this is a standard one pager; for older companies, this set out the purposes of the company
- Articles of association – either standard articles drawn from an Annex to the Companies Act 2006 or tailored.
- Shareholders' Agreement – not technically a constitutional document, but it must be complied with and usually sets out detailed procedures around decision making and shareholder rights.

Where to put governance provisions

- In articles of association – any failure to follow procedure in the articles makes the matter *ultra vires* and void
- In shareholders' agreement – any failure to follow procedure in the SHA gives rise to a claim for breach of contract by shareholders BUT matter is NOT void.



Directors' Duties

Directors' duties come from the Companies Act 2006 and secondary legislation.

General Duties ss171 - 177

- To act within powers in constitutional documents;
- To promote the success of the company taking into account interests of stakeholders
- To exercise independent judgment
- To exercise reasonable care, skill and diligence
- To avoid conflicts of interest
- Not to accept benefits from third parties
- To declare interests in proposed transactions

Secondary legislation

- To consider environmental, social and governance obligations
- To comply with sanctions, anti-money laundering, terrorist financing & non-proliferation obligations



Criminal offences

- Breaches of directors' duties may constitute criminal offences
- Potentially large fines and prison sentences

Personal liability

- Directors can be held personally liable to shareholder and creditors for certain breaches of duty (primarily breaches of "fiduciary" obligations)
- Shareholders & creditors can sue directors personally

Corporate liability

- Where directors have breached their duties, the company can become liable to customers, creditors and shareholders

Liability for breaches



Insurance

- Directors' & Officer's Liability Insurance
- Protects directors from personal liability from civil claims but NOT criminal claims

Preparation

- Review the constitutional documents & understand the process to be followed
- Consider your duties as a director and keep up-to-date on current law

Process

- Follow the correct process and record the process in writing every time
- Directors' decisions are recorded in a board minute
- Approval of shareholders is given by a written shareholders' resolution
- Special resolutions and some ordinary resolutions must be filed with Companies House

- *If you didn't record your process, you didn't do it.*



How to protect yourself from liability



Intellectual Property



What is IP?

All of the intangible stuff created through a business' life cycle



Ownership of IP

- Where IP is created by someone other than an employee, it is owned by the creator from the point of creation NOT by the start-up
- To transfer IP to your company, the creator must sign a written agreement



Registration of IP

- Trademarks
- Design rights
- Patents



MANAGE YOUR RISK

Types of risk

Legality

- Is the business legal?

Regulatory

- Financial services
- Gambling
- Solicitors/accountants
- Employment business

Financial

- Set-up costs
- Ongoing costs as they fall due
- “Real world” or “scale-up”



Trading

- What are the risks to customers?
- How can they be reduced?
- Limitation of liability
- Insurance

Reputational

- Risk of damage to reputation by upset customer and/or breaches of law
- Importance of setting legal documentation right



MANAGE YOUR RISK

Contracts

Without a contract

You have UNLIMITED liability of something goes wrong except where the law specifically implies terms. This happens in certain types of face to face commerce and in respect of consumer protections (where implied terms are always pro-consumer)

With a generic contract

Generic contracts are generic. They attempt to cover multiple instances and so limitation of liability language is broad and generic. Both statute and caselaw limit the enforceability of broadly drafted, generic provisions, particularly when dealing with consumers.

Tailored contract

You can limit liability for specific risks and ensure that you have clear language setting out what you will be liable for and what you won't be liable for. Clear drafting is much more likely to be enforceable.



Key Agreements you may need

Co-founder

- Reverse vesting;
- Intellectual property transfer; and
- Restrictive covenants.

Developer

- Scope of work;
- Remuneration; and
- Intellectual property transfer.

Customer contract

- Terms and conditions; SaaS agreement; long-form agreement;
- Limitation of liability; and
- Payment and refunds.

Others

- Privacy policy/data processing agreement;
- IP transfer agreement; and
- Supplier agreement.





STRUCTURE

Team Incentivisation

Key considerations of sweat equity

- Once issued, shares cannot be taken back without explicit authority
- Tax, tax, tax
- Valuation

Structure

Reverse Vesting

All shares issued upfront but deemed to be earned over time. If team member leaves, he keeps shares he has vested and loses the rest.

Tax incentivised options

(Generally EMI): no shares issued up front. Shares issued once vested. Optimised tax treatment on exercise (issue of shares) and sale.

Unapproved Options

No shares issued up front. Shares issued once vested. Income tax payable on difference between exercise price and market value at point of exercise (issue).

Considerations when market trading

Licensing and permits

- Market trading licence;
- Street trading licence; and
- Temporary market stalls.

Food and health regulations (if selling food)

- Food business registration;
- Food hygiene ratings and inspections – Food Standards Agency; and
- Allergen labelling.

Insurance requirements

- Public liability insurance - £2m;
- Product liability insurance; and
- Employers' liability insurance.

Trading standards and consumer protection

- Description of products;
- Pricing; and
- Refund policies.



Considerations when market trading

Choosing the Right Market

- Location & footfall;
- Market fees & costs; and
- Target audience.

Logistics & Operations

- Stock & storage;
- Transport & setup; and
- Weather Protection.

Marketing & Branding

- Signage & display;
- Social media & online presence; and
- Loyalty & discounts.

Payment Options

- Card payments;
- Cash handling; and
- E-commerce.



Contact Us



BUCKWORTHS

2nd Floor, 1-3 Worship Street,
London, EC2A 2AB

E: office@buckworths.com

T: 020 7952 1723



@BuckworthsLaw



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