

Great ideas when implemented strategically, in the right place and at the right time, will take off and make their mark in no time.

Founding a business, however, is more than just having a great idea. It is akin to building a multi storey building the height of which is determined by how steady and broad the foundation is.



## **LAYING THE FOUNDATION**

Various professionals with expertise in accounting, capital raising, legal compliance and risk management are required to turn an idea into a commodity or service offering.

On the basis that you have a line of products or service offering in mind and have sourced suppliers, manufacturers, personnel required to make or provide the service, you need to consider:

### **THE BUSINESS STRUCTURE(S)**

#### **TRADING VEHICLE**

This is usually liability, tax and scale driven. For instance, if you are aiming for a medium to large scale business, perhaps with a few business

partners, it is best to opt for a limited liability company as the trading vehicle. Here the tax rate is currently 30% and provided that the the company does not trade insolvently, liabilities are limited.

### **ASSETS HOLDING VEHICLE**

This is to quarantine your important assets from risks associated with the running of the business.

If you are building a unique brand from day 1 and are looking to carve out a niche in your relevant industry, having a distinct brand (consider ways to protect your brand in our [previous article](#)) is imperative. The brand itself will accumulate goodwill and such goodwill will become an important asset of the business.

Other important assets can be leasehold interests of the premises if location itself carries goodwill or has the potential to with respect to your business. If you own the freehold, then definitely this should be held in an entity separate from the trading vehicle. At this point, how the shareholdings are to be held, whether a discretionary or a unit trust should be considered to sit behind the trading vehicle or asset holding vehicle or whether debt or equity contribution is to be preferred, will also need to be decided.

### **INTERNAL OPERATIONS RULES**

Ground rules need to be set amongst business partners so that there are clear roles and responsibilities, entry and exit strategies, couched always in terms to ensure that the business' interests are well balanced against the interests of individual shareholders. Partial shareholders' agreements which favour majority shareholders may not withstand an oppression challenge. To ensure minimal business interruption, ongoing funding rules and exit strategies are particularly important (refer to [our previous article](#)). You will want as little disruption to the business from your business partners as possible and 100% co-operation from them to propel the business to heights that will benefit all.

### **STATUTORY COMPLIANCE**

Each industry is governed by its own set of requirements, ranging from specific permits, planning and building regulations, Modern Awards (which sets the minimum employment conditions for your employees) to

quarantine regulations if you are importing ingredients or goods into Australia, to name a few. The timing and cost of compliance must be factored into the business model.

## **THE BUSINESS PREMISES**

Selection of the appropriate business premises will entail assessments of:

- The location
- Local competition
- Proximity to public transport (if a retail premises)
- The mix of offerings in the immediate vicinity
- Proximity to possible allied partners
- Parking availability
- Spread of competition in the general location

### **The Lease Documentation**

Once a suitable location is selected, usually a lease will need to be entered into to secure rights of occupation (unless you are looking at purchasing the freehold). When negotiating the lease, other than the usual commercial terms regarding rental, outgoings, term and rental review, the following must also be considered:

#### **Permitted Use**

Ensure that the permitted use is broad enough not just for your business but also allows you to assign to a third party which may want to put the premises to a different use. An assignment of the premises mid term may not mean that you are selling your business (in which case the use will be the same), you may be expanding and therefore need to move to larger premises. To have a limited permitted use in the lease may reduce your chances of a timely assignment.

#### **Council Requirements**

If you are looking to carry out renovations or a change of use of the premises dictates that a planning permit and a building permit be obtained, this must be taken into account when negotiating the lease. Otherwise you may find yourself at best having to pay rent during the long dragged out period of planning permit application, dealing with objections, getting plans drawn and a building permit issued or at worst bound to a lease without a valid permit to operate your business.

#### **Fit Out Works**

Here, a large group of professionals will be involved: architects, designers, builders, town planners, building surveyors, suppliers/installers of materials, painters, electricians and this list is not exhaustive.

It is important that all these professionals work together to ensure that the end result is built for its purpose and is done properly. The contract with the builder needs to state the scope of works clearly and what the builder's obligations are. Very often, when problems arise, it is hard to pin point which party should be responsible for rectifying the faults. For instance, where the flooring is selected by you and the builder is asked to source the flooring from the supplier and install the same, who is responsible for the costs of lifting and re-installing floor boards when a manufacturing fault is discovered? Here the manufacturer/supplier is clearly at fault but the builder, if it has followed installation instructions perfectly, cannot be held liable to lift the old and relay the new flooring.

Equally, the interior designer, architect, structural engineer and the builder need to work together to ensure that the design takes into account the location of drains, pipes, weight loading thresholds, power supply and that the materials used are fit for the purpose of the build. Only then can you be assured that the fit out works can be carried out in a cost effective and timely manner.

Does your Lease have provisions for fit out works to be effected? How long will the landlord's consent take? Should a request be made to the landlord to contribute to the fit out cost? Are there additional costs involved in obtaining the landlord's consent? These are all questions to be mindful of when negotiating with the landlord.

### **Other Lease terms**

Care must always be taken to understand all your obligations as tenant under the lease and in particular, your responsibilities with respect to maintenance and reinstatement.

### **VARIOUS INSURANCE COVERS**

In addition to the mandatory insurance policies required to be taken out under the Lease, you should consult your insurance broker as to other advisable insurance policies to take out to cover business interruptions and other risks. Public Liability, Plate Glass, Contents and WorkCover insurances are usually mandatory requirements under commercial leases.

## **BUILDING A MARKET**

To create a market for your products or service offering, you will need marketing, communications advisers to put your offerings in front of your target audience to elicit engagement and response. Different industries call for different marketing methodology and a product/offering strategically positioned in the market place can take off in leaps and bounds.

This is also the time to ensure that agreements with your suppliers, employees, contractors are in place to provide seamless delivery of quality product/service and that your chosen branding is registered with all trade secrets adequately protected.

A solid foundation gives you the peace of mind to focus on growing your business, fostering customer relationships, nurturing staff and gives you the time to attend to the day to day management demands of your business.

## **EXPANDING YOUR MARKET**

When you start to venture into multiple locations, interstate or overseas opportunities, further ground work will be required to support such growth and you will need to revisit all the above considerations in light of the new venture (using a separate entity or creating an associated entity of the existing framework).

**LET US HELP YOU BUILD YOUR BUSINESS**

**CONTACT US FOR A CONSULTATION TODAY.**