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Lawyers Weekly Masterclass

Setting up, running and expanding your business – top tips, traps and strategies (Part 1)

WORKBOOK

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CASE STUDY: Sarah's Designer Masks



Sarah is a young fashionable entrepreneur pursuing a new business venture, having recently graduated from Prestigious University with a degree in business management.

In February 2020, Sarah watched in horror as the COVID-19 pandemic gripped the world. Many news sites showed images of health workers and everyday citizens wearing masks to protect themselves against this new untamed virus. It seemed only a matter of time before similar scenes were common in Australia.

Motivated by a passion to ensure all Australians were prepared for the virus, and in a fashionable manner, Sarah saw an opportunity for a bespoke mask-making service. Sarah decided to set up a new company, No Challenge Too Large Pty Ltd to pursue this venture.

Sarah contacted Darian, a peer from university with a degree in information technology, to develop an application for the new pursuit whereby customers could design their own fashionable masks from fabrics and templates created by Sarah. Darian delivered a great app with many features, including a function for customers to choose various fabric combinations, the layers of fabric (minimum 3) and designs. The app also collected vital customer information for communicating receipts and ensuring swift dispatch and delivery of the product. Sarah was impressed and brought Darian on as a 20% shareholder in No Challenge Too Large Pty Ltd.

Sarah also put to use her business skills to line up prospective arrangements with suppliers, manufacturers and delivery partners. It was vital that the bespoke masks could be swiftly delivered within 1 – 5 days of ordering.

Sarah got in touch with Ming, another university peer with a major in marketing, to oversee the online and television marketing of the product as 'Sarah's Designer Masks'. Ming also has the brilliant idea of marketing to organisations looking for bespoke masks.

Miraculously, Sarah and Darian's hard work was paying off, with all systems online upon Australia's lockdown in March 2020. By May 2020, the company continued to run at a small loss, although Sarah was more concerned with growth than immediate profitability and wanted to leverage the ongoing lockdowns to distribute Australia-wide.

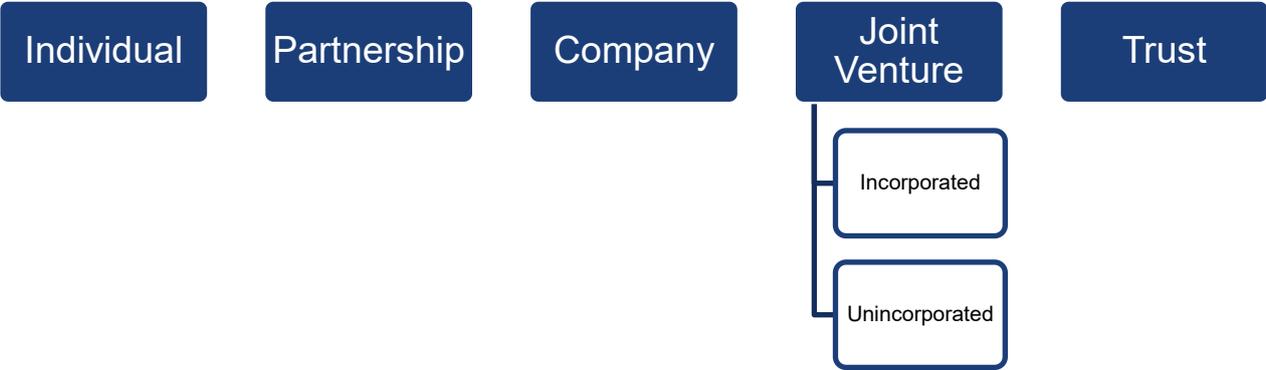


1 BUSINESS STRUCTURING

Recap of relevant key facts:

- Sarah set up a new business venture making bespoke masks
- She pursued the venture through a new company No Challenge Too Large Pty Ltd
- Sarah decided to give a 20% stake in the company to Darian, who has been instrumental in developing the app whereby customers could design their own fashionable masks from fabrics and templates created by Sarah

1.1 Different ways to structure a business



Notes

1.2 Key considerations in deciding which structure to adopt

Individual

Advantages:	Disadvantages:
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Partnership

Advantages:	Disadvantages:
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Company

Advantages:	Disadvantages:
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Trust

Advantages:

Disadvantages

Joint Venture

Advantages:

Disadvantages:



2 INTELLECTUAL PROPERTY

Recap of relevant key facts:

- Sarah has decided to pursue the venture under the name 'Sarah's Designer Masks'
- Sarah provided the original collection of fabrics and template designs
- Darian developed the key technology underpinning the application upon which the business is based

2.1 What is intellectual property and why is it important?

- Businesses to consider whether their inventions, creative exploits and brands should be protected by intellectual property (IP) rights
- A robust portfolio of IP rights gives businesses a competitive advantage over others in their field

2.2 Does the business own the intellectual property?

- Domain name and business names are different from brand
- Important to ensure that individuals that have designed the app and mask designs assigns any IP to the company
- Licensing IP that is not owned by the company

2.3 How to protect intellectual property?

Patents

- Protection for inventions

Trade Marks

- Can be used as a marketing tool and enable brand protection

Copyright

- Protection for original, creative works

Registered Designs

- Usually used for industrial designs

Confidentiality

- Confidential information or trade secrets may be commercially valuable

Notes:



3 EMPLOYMENT

Recap of relevant key facts:

- No Challenge Too Small is an Australian company
- Sarah is a majority shareholder and Managing Director of the company.
- Darian is a shareholder and Head of IT
- Ming is employed as Marketing Manager
- The company is looking to employ various personnel across Australia for technical and customer support

3.1 Engaging others to assist in the business

- Employee vs contractor
- Full time, part time or casual

3.2 Key points to bear in mind

Fair Work Act 2009 (Cth) and overall framework

Termination of employment

General protections and workplace rights

Superannuation and leave entitlements

Notes:

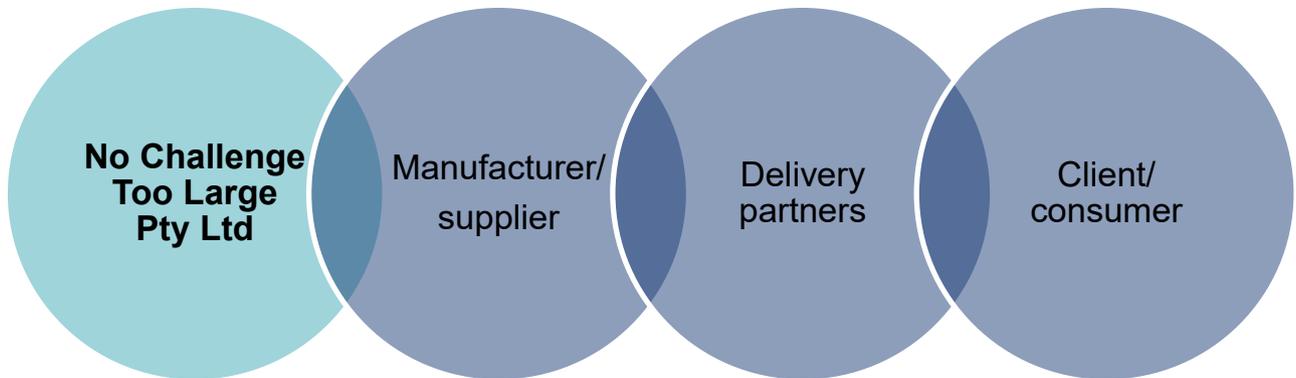


4 COMMERCIAL CONTRACTS

Recap of relevant key facts:

- The company has entered commercial contracts with suppliers, manufacturers and logistics partners
- The company may need to evaluate its commercial contracts from time to time as business needs change or it seeks to upscale
- The company is looking to expand by selling to large organisations looking for bespoke masks

4.1 Do you need to put in place any formal arrangements/contracts?



Notes:

4.2 Key points to keep in mind when considering terms of commercial contracts

Key
commercial
terms

Term and
termination

Disclaimers /
exclusions

Limitation of
liability

Change of
control

Notes:



5 NEGOTIATING: DOS & DON'TS

Recap of relevant key facts:

- Sarah has been the representative of the company, negotiating various employment and commercial contracts
- No Challenge Too Large Pty Ltd is a relatively new and small company negotiating with large manufacturers, suppliers and corporate clients



Do

- + Ask about and listen to what really matters
- + Keep calm & communicate clearly
- + Stay nice, respectful and light
- + Mix your style and approach
- + Consider packaged concessions



Don't

- ✘ Pursue small points that don't matter
- ✘ Negotiate through mark-up rather than face-to-face
- ✘ Bully or badger
- ✘ Become a 'one trick pony'
- ✘ Re-open agreed points

Notes:



6 WHEN TO ENGAGE LEGAL ADVISERS

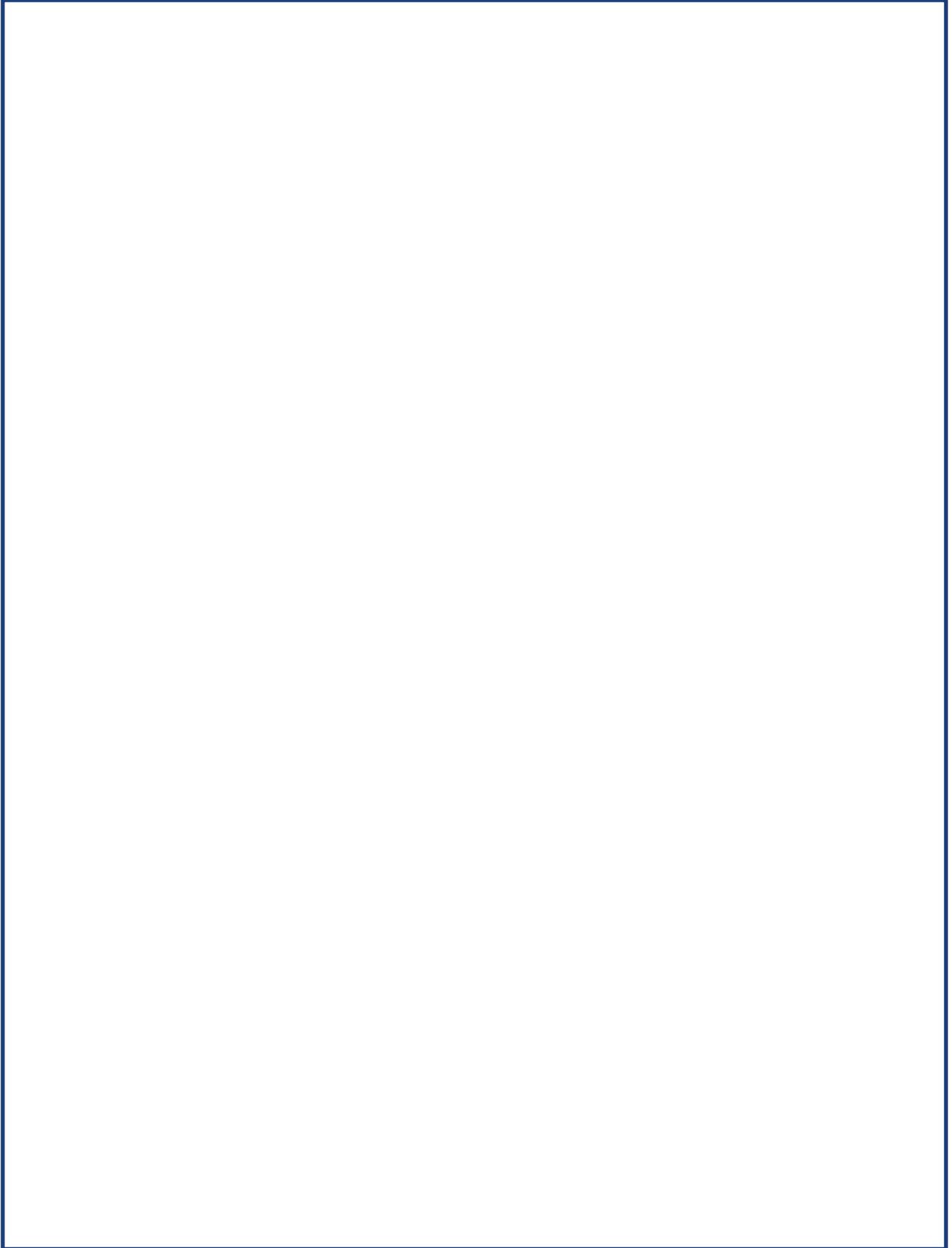
6.1 Knowing when to engage legal advisers



6.2 Tips for engaging and dealing with legal advisers

Notes:

Additional notes



Presenter profiles



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She has advised on leading cross-border and Australian transactions across a wide range of industries, including technology, media and consumer products.