



IACT19

# After Hours

Legal Essentials, 3<sup>rd</sup> September, CBRIN.

An initiative of



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## **Legal Essentials for Start-Ups**

*After Hours: InnovationACT 2019*

*3 September 2019*

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## Outline

- Business structures
- Documenting your legal structure
- Confidentiality agreements
- Intellectual property
- Contracting with third parties
- Final 5 tips

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## **Business Structures**

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## Different types of business structures

- Sole trader
- Partnership
- Proprietary limited companies
- Public companies
- Incorporated associations
- Joint venture
- Trusts
- Franchise

# g1. Sole Trader

What is it?	Benefits	Risks/Disadvantages
A person trading as the individual legally responsible for the business	Easy and low cost to set up	Personally liable for debts of business (consider personal assets)
E.g. John Smith, trading as John's plumbing	Retain complete control of assets and business decisions	Not considered an employee of the business (benefit and disadvantage)
Single individual trader	Fewer reporting requirements	No succession

# g1. Partnership

What is it?	Benefits	Risks/Disadvantages
2 + individuals operating a business together	Easy and low cost to set up	Not a separate legal entity, Partners are “jointly and severally” personally liable for debts of business
Partners share control and management	Resource of additional partners and increased borrowing capacity	Significant changes to ownership or structure may require new ABN
Can have partnership of trusts	Fewer reporting requirements	Can be difficult to secure third-party investors as there are no shares

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# Company

*Proprietary limited, private*

What is it?	Benefits	Risks/Disadvantages
A separate legal entity from its officers and shareholders	Limited liability (compared to other structures)	Increased reporting requirements, including requirement to report changes to ASIC
Has the same rights as an individual – can own assets, incur debt, sue and be sued	Succession – indefinite lifespan	Cost to set up and administer
E.g. Smith's Plumbing Pty Ltd	Transfer of shares relatively straightforward	Directors duties and obligations under <i>Corporations Act 2001</i>



# g1. Public Company

What is it?	Benefits	Risks/Disadvantages
Publicly traded company whose ownership is dispersed among general public. Can be listed or unlisted	Revenue raising by offering shares to the public – quick access to capital	Significant reporting requirements, including requirement to report changes to ASIC
Has the same rights as an individual – can own assets, incur debt, sue and be sued	Succession – indefinite lifespan	Cost to set up and administer
Commonly used for not-for-profit entities (public company limited by guarantee)	Transfer of shares relatively straightforward	Directors duties and obligations under <i>Corporations Act 2001</i>

# g1. Incorporated Association

What is it?	Benefits	Risks/Disadvantages
Registered legal entity for public purpose, not-for-profit (i.e. culture, recreational or charity)	Limited liability	Reporting requirements (vary between jurisdictions)
Has the same rights as an individual – can own assets, incur debt, sue and be sued	Succession – indefinite lifespan	Duties under the <i>State/Territory Associations Incorporation Act</i>
Legal structure independent of members	Can acquire and dispose of assets and borrow money	Requirement to be not-for-profit

# g1. Joint Venture

What is it?	Benefits	Risks/Disadvantages
Created for a specific (and usually limited) purpose	Access to additional expertise and resources	Differences in opinion/process – requirement to trust and communicate with other parties
Two or more parties maintain their identities/structure but jointly undertake enterprise	For a limited time (temporary)	Possible inability to exit mid-project
	Shared risk and cost	Unreliable partners, or unclear and unrealistic objectives

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# Trusts

What is it?	Benefits	Risks/Disadvantages
A trustee is responsible to hold assets or property for the benefit of others (beneficiaries)	Limited liability	Complex structure
Can have a discretionary family trust or unit trust (specific right to distributions)	Greater privacy than a company	Cost of establishing and maintaining
A relationship, rather than a legal entity	Potential flexibility in distributions and tax benefits	Obligations of trustee to administer trust deed

# gl. Franchise

What is it?	Benefits	Risks/ Disadvantages
A way of doing business, rather than a business itself	Benefiting from well known reputation, brand or image	Restrictive on how business may be operated
Relationship between franchisor (owner of franchise) allows a franchisee the right to market/distribute the franchisor's goods or services, using the franchisor's name	Supported by franchisor's network	Shared profits with franchisor
	Access to manuals, processes and formulas of successful business	Possibly limited right to operate as franchise

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**Documenting your legal  
structure**

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## What to consider when documenting business structure

Consider it your “business prenup”



- What is the nature of business intended to be conducted?
- What are the aims/objectives of the business?
- Are there any grants available/licences required which impact on the type of business structure available?
- What is each party's initial & ongoing contribution? (monetary or otherwise)
- How is intellectual property owned and held?
- How will funds be raised?
- How long will the business operate (finite or indefinitely)?

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## What to consider when documenting business structure

- What happens if one party breaches a term of the agreement?
- If one party leaves the business, is there any restraint on their activities?
- Who will make decisions on management and operational matters (i.e. CEO?)
- What types of matters must the parties vote on?
- What if there is a deadlock on a vote (50/50)?
- How will disputes be resolved?
- What happens if a party wants to exit the business?
- Are there certain circumstances when a party can be forced to exit?



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## Where do duties arise from for officers?

- Partnership Agreement
- *Corporations Act 2001* (Cth)
- Directors duties
- Constitution
- Shareholders Agreement
- Joint-Venture Agreement
- Trust Deed
- Franchise Agreement
- Duty to act in the best interest of those who benefit from the business

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**Confidentiality  
Agreements/Non-Disclosure  
Agreements**



## Keeping it confidential

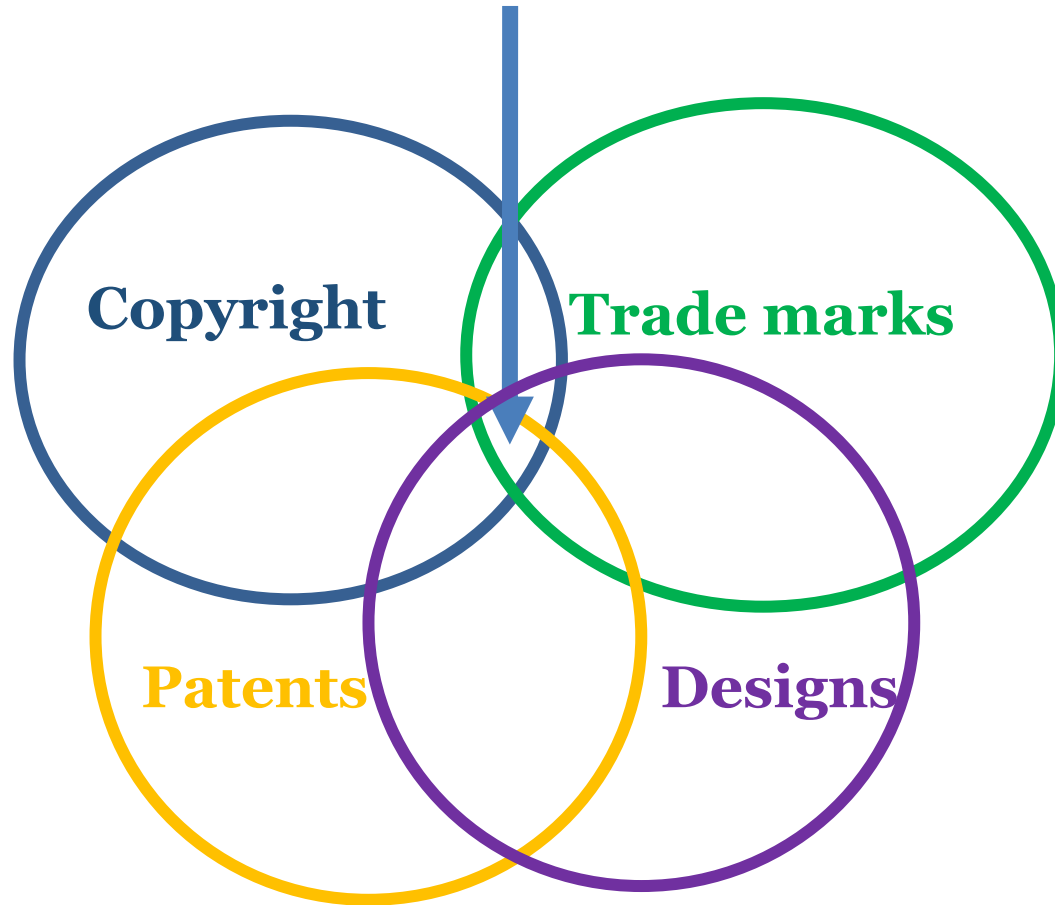
- Do you need one?
- What are you seeking to protect and from whom?
  - Trade secrets
  - Details about products/inventions
  - Business plans
- Carefully consider the timing of a confidentiality agreement.
- Protect your business' proprietary information.

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## **Intellectual Property**

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# INTELLECTUAL PROPERTY



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## Trade Marks

### Logo and Composite Trade Marks



Nike Innovate C.V.



### Colour Trade Mark

Christian Louboutin



### Sound Trade Mark

McCain Foods (Aust) Pty Ltd

*SHORT, HIGH PITCHED "PING"  
SOUND BETWEEN WORDS "AH  
MCCAIN" & "YOU'VE DONE IT  
AGAIN"*

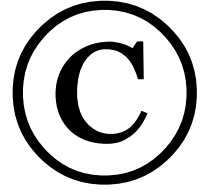


### Shape Trade Mark

Coca-Cola Amatil (Aust) Pty Limited

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## Copyright



- Protects expression of ideas.
- No registration system under Australian law.
- Protects forms of expression such as text, images, music – automatically covered.
- Applies to published and unpublished works.
- Copyright still applies to material on the internet.



## Patents

- Legally enforceable right for a device, substance, method or process.
- Must be new, useful & innovative/inventive.
- Publicly available once registered.
- Must register before going public.
- Registration provides right to stop others using/manufacturing/selling.



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## Designs

- Design is what makes a product look the way it does. It includes:
  - shape
  - configuration
  - pattern and
  - ornamentation.
- When applied to a product, it gives it a unique appearance.
- For your design to be certified and legally enforceable it needs to be determined as ‘new’ and ‘distinctive’.



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## Commercialising your intellectual property

- Assignment
- Licensing
- Franchising
- Spin-Offs

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**Contracting with third  
parties**

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## Considerations when contracting with third parties

- Balance of power – how can you address this?
- Reduce the agreement to writing.
- Verbal agreements can still be binding.
- Can be bound by a signature, whether or not you have read the contract and understand its terms.
- Contracts are used to minimise and allocate risk/liability.
- How or when does the contract come to an end?

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**Top 5**



## Top 5 tips for a start-up

1. Plan to succeed by planning for the long term (start-up without slowing down).
2. Know what you want to achieve.
3. Get the right business structure from the start and clearly document it.
4. Protect your intellectual property as a key asset of your business.
5. Reduce agreements to written contracts.

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## Questions?

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# Mentor matching update

- + Most teams who have requested Primary mentors have now been matched, the remainder will occur by tomorrow (thank you for your patience!)
- + Teams who missed out on Primary Mentor matching will still have access to Secondary Mentor matching.
- + More mentors will join throughout the program, so let us know if there are particular areas of expertise you are seeking and we can do our best to find some!



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# Secondary mentors

- + Look out for an email tomorrow morning with instructions on how to access and use the OK RDY mentor matching platform.
- + Download the app, complete your mentee profiles, and use the unique IACT19 code to access our exclusive pool of mentors.
- + The more information you include in your profile, the more potential matches you will make!
- + View your potential matches and connect with mentors you may like to work with. (Mentee wants to connect + Mentor wants to connect = MATCH!)

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# Challenge 05

- + For this challenge, consider your team's current business model and:
  - + Identify one aspect of your business model that you feel will be the most difficult to execute, and why.
  - + Engage with your mentors, supporters, friends, etc. to identify active steps you could take to improve your ability to execute in this area.
  - + Share what you have learnt in the IACT Community Facebook group (and see if anyone in the IACT community may be able to help you!).
- + You have until **5pm, 6<sup>th</sup> Sep** to complete this Challenge in order to earn **one point**.



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See you at

# Workshop 3

Prototype & MVP, 7<sup>th</sup> September, CBRIN

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