

BIG BUSINESS HOUSE©

BUILT ON
Firm Foundations

**BUSINESS
ADVICE
IN THE ROUND**

THE BROOKE CONSULTANCY LLP
BUSINESS ADVICE IN THE ROUND

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PROLOGUE

Building your Big Business House on strong foundations applies to Small and Medium Enterprises (SME) from start up to turnover of £50m and the same need for strong foundations applies to Social Enterprises

The Big Business House Foundation Document has been prepared by Lynne Brooke of The Brooke Consultancy, and his profile is in Annex 1.

This document shows SMEs and Social Enterprises how to grow their business and how to manage risk to avoid adverse financial consequences.

The Brooke Consultancy is a new type of Law Firm that provides **Business Advice in the Round** that is advice that is integrated, produced collaboratively and pursued with tenacity by working in collaboration with other professionals in the financial services sector. See Annex 2.

Business Advice in the Round is available from one source, The Brooke Consultancy, and that renders it effective, efficient and economic business planning.

The purpose of this Big Business House Foundations Document is to increase your awareness of risk and help generate greater revenues.

The format used in this Big Business House Foundation Document is to identify risk, and the foundations for growth to be used. The reason the advice is required is contained in the tag line at the end of each Chapter to succinctly summarise the need for the Foundations of Growth to be plugged in to your business's DNA and they are the criteria for growth that need to be addressed.

Obtain **Business Advice in the Round** from The Brooke Consultancy so that you build your business on strong Foundations.

CHAPTER 1

WHAT CORPORATE ENTITY SHOULD YOU USE

There are many different types of structures

- Sole Trader
- Partnership
- Limited Liability Trading Company
- Limited Liability Partnership
- Company limited by Guarantee
- Community Interest Company
- Charity
- Charitable Incorporated Organisation
- Mutuels such as an Industrial Provident Society
- Hybrid

To decide on the structure a principal factor is to decide whether you are a:

Commercial Entrepreneur who wants to make money and create value and wants an exit that can be achieved by merger, sale or flotation.

Social Entrepreneur who wants to provide social benefit and enjoy income but who is not trying to create capital value.

Hybrid: a structure that generates revenues for social benefit and that also has an eye on creating value from an exit. A Hybrid involves a Community Interest Company limited by guarantee that holds all the intellectual property rights and licences the IPR to a head licensee. The Licensee is a limited liability trading company controlled by the licence and a golden share.

Whatever type of company you are setting up, you need to take advice about tax. It is lawful to structure your business in a way that is tax effective and there are tax driven investment incentives contained in legislation.

Collaboration:

We can advise you about such matters as 50% tax relief for investors under Seed Enterprise Investment Scheme, 30% tax relief under Enterprise Investment Scheme and tax efficient methods of incentivising your employees by introducing an Enterprise Management Incentive share option scheme because we work in collaboration with Wellers, your indispensable business accountants and Robert Schon a highly experienced personal and corporate tax specialist.

Risk Management Warning

If you choose the wrong structure for your business you could end up paying more tax than you should, incurring personal liability or having an inappropriate structure for the function and outcome you want to achieve for example an LLP is not the appropriate vehicle for fund raising but it is, for example, suitable for joint venture enterprises.

You must have the right infrastructure and TBC can help you put that in place.

CHAPTER 2

CORPORATE GOVERNANCE

How to run your Business

As an entrepreneur of an SME you may be advised to have a shareholders agreement but that's not good advice unless it contains personal obligations by named individuals. Most of the provisions in shareholders agreements can be contained in Articles of Association and they are notice to the world so the issue of enforcing the provisions under the Articles of Association rarely arises.

Corporate Governance Deals with such matters as what happens if any of the following events occur in relation to your co-shareholder/partner:

- death
- they leave
- become bankrupt
- lose capacity
- a majority shareholder sells leaving you a locked in minority shareholder
- a 50/50 company - how to break the deadlock in the event of a dispute

Well drafted Articles of Association will cover all these eventualities.

If your co-shareholder/partner dies you don't want to find yourself working with someone who you never envisaged being in business with. The mechanism is a double option agreement. It gives you the right to buy the share or interest and at the same time is tax efficient but it does mean that you need to take our insurance cover so that you have a fund to buy the share or interest from the estate of the deceased co-shareholder/partner. The end result is that the estate of the deceased co-shareholder/partner is paid for the shares or interest, you get the shares and stay in sole control of the business.

Collaboration

To deal with the risk of co-shareholder or partner dying we liaise with Clem Cowley of the Penny Group, to put into place affordable policies that will generate the sum available to buy any shares or interest of your deceased shareholder/partner. He will also be able to advise:

- on the issue of pensions for directors
- about auto enrolment and
- the requirement under the Pensions Act 2008 that between June 2015 and February 2018 that involves small and micro employers in the provision of pensions for their employees.

Proper financial planning is a very necessary step for the directors of an SME.

Risk Management - Warning

If you don't have a fund to deal with the issue of death a dispute may arise with the estate of the deceased shareholder/partner. It can be so

debilitating that it destroys the business. As a director of a company you need to comply with the provision of the Pensions Act 2008 and the issue of auto enrolment or you risk fines or at worst imprisonment. If you don't have detailed Articles of Association, disputes that arise will be expensive and so damaging that your business may well fail

You must protect the business and yourself by a Double Option Agreement. Your business is not your pension. You must deal with pension issues and long term financial planning separately.

CHAPTER 3

EMPLOYMENT

These rules govern how your employees behave in relation to you, each other and the outside world.

All employers must have employment policies, procedures and contracts of employment. The contracts can be for:

- full time employment,
- self-employment,
- zero hours, or
- an internship agreement.

To protect the business you need the directors to have service contracts to secure their services because they are essential to running the business. That means building in certainty of employment for the directors and securing continuity for the business.

Employment policies are required to deal with grievance and disciplinary procedures. It is sensible to have other procedures relating to sickness, diversity, capability etc. The business will need to deal with anti-bribery and data

protection and may be required by law to deal with the issues of money laundering.

All agreements need a non competition clause to prevent your business and personnel being stolen when a person leaves and sets up in competition. The non competition clause has to be drafted very carefully because unless it is reasonable you won't be able to enforce the non compete, clause even against a rogue employee.

Your employment policies and terms and conditions need to be tailored to your business and you need specialist lawyers. Don't go to one of the big commercial providers to whom you have to pay a monthly subscription as you may well end up with documentation that is not tailored to your business and the advice frequently given is not strategic and not proactive.

Employment rights kick in after two years but there is no minimum time if the employment disputes arise out of discrimination on the grounds of race, gender, disability or whistle blowing.

Collaboration

We work with Lynne Burns, a lawyer who specialises in employment law.

Risk Management - Warning

If you don't have proper policies, procedures and contracts in place or even if you have them and you don't properly apply them you can be liable for compensation. The maximum is presently the greater of £74,000 or 12 month's pay and if an employee wins a case against you on the grounds of discrimination there is no limit to the level of compensation that can be awarded. Not having in place policies procedures and the knowledge as to how to properly apply them can mean in the event of an employment claim, the end of your business

Protect yourself from employment claims by having correct policies and procedures in place and introduce training to apply them.

CHAPTER 4

TRADING CONDITIONS

Your Relationship with suppliers and consumers in your marketplace

You need to secure your sources of supply to enable you to carry on your business, for example manufacturing agreement protection of intellectual property rights and an adequate flow of product.

You need to regulate the terms on which you supply goods or services whether it's to consumers or other businesses. Your trading conditions need to specify the product, payment, delivery, passing of risk, what you will do, what you want your buyer or user to do, limit to essentials the warranties that are given and exclusion of liability. You will have to comply with all consumer legislation, for example, that recently enacted about distance selling and cancellation rights.

We have drafted for brokers, contracts for the sale of large volumes of precious commodities.

If you want to become a franchisee you need to carefully check the terms of the franchise agreement.

If you want to licence your services, for example as a fashion designer, the licence needs to state what you want the licensee to do, your obligations, their obligations, protection of your intellectual property rights, quality control, the amount of the royalty and when is it payable.

If you have proprietary software then you need an agreement that governs the use of your software. We have recently prepared agreements for users of proprietary software relating to a booking service and the use of a trading platform for home traders.

Collaboration

Drafting commercial contracts is a specialisation of The Brooke Consultancy but occasionally it will be necessary to go to Counsel for specialist drafting, such as in the financial services sector as the rules concerning regulated activities and buyers of product or services are highly complex.

You must insure against contractual risk. Rob Thacker of Pound Gates is a highly respectable and innovative chartered insurance broker who will take a detailed brief and research the market for you. A requirement of obtaining cover is properly drafted trading conditions. Rob will be able to help you obtain legal expenses insurance cover and the mere fact that you have insurance cover is often sufficient to deter a claim.

Risk Management Warning

Avoid advisers who prepare the agreement and say put it in the bottom draw and forget about it unless something goes wrong. The Brooke

Consultancy drafts working documents that are a blueprint. The contract will be tailored to your needs so that you know what obligations you have and how you have limited your liability. That means you avoid the risk of being hit with a massive claim because you can point to a clause in the contract that limits your obligation and sets a maximum level for compensation.

If you wish to sell your business and if you don't have a contract from your supplier, that will adversely affect the price or mean that your business is unsaleable because a potential purchaser could go direct to your supplier.

You need blueprint bespoke contracts and insurance without which your business risks financial damage from claims by suppliers or buyers.

CHAPTER 5

BRANDING

How to protect your brand and attract people to do business with you

You need to trademark your name and logo and if it's an invention you will probably, but not always, want to patent it but you will certainly want to protect it by confidentiality and non circumvention agreements (CNCA). CNCAs need careful drafting to protect the business idea that you are trying to exploit commercially.

If you have a trademark and know how that relates to your product or services you may want to licence its use in other territories and enjoy royalty income. The key to doing that is that you must trademark your name and build a body of know how. Start writing the know how book now – it's your Intellectual Property.

This extremely important topic links in to the question of marketing, business strategy, your presence online and social media.

Collaboration

Rosemary: a trademark and patent specialist who will guide you through the maze and provide you with cost effective protection of the goodwill of your business.

Paul: builds dynamic website with graphic design and search engine optimisation so your website sells and is not just an online brochure.

Nathan: social media and advertising - a specialist advertising company that will promote your company's visibility by the use of video and social media.

Michelle: will help you position your business, promote it and provide you with tools to help you generate and maximise profits and measure effectiveness.

Branding and trademarking is an essential requirement to protect your business. It is also critical to generate and increase revenues.

Risk Management - Warning

You must protect your intellectual property rights because IPR is the prime asset of your business. If you do not protect your name, others can use it and you will be faced with trying to prevent that happening by bringing a passing off action against your competitor and that can be ruinously expensive. Registering the name at Companies House and domain names will not protect. The most important action is to register your trademark.

You must protect your IPR by trademarking or patenting your invention. Branding and promoting your business online is fundamental to the growth of your business

EPILOGUE

The Brooke Consultancy provides Business Advice in the Round to SMEs from start up to turnover of £50m+ and Social Enterprises.

Whether you are a commercial or social entrepreneur, the foundations for your business to grow are:

- correct corporate structure
- appropriate corporate governance
- employment terms and conditions, policies and procedures
- trading conditions for suppliers and buyers
- protecting and promoting your brand

Building your Big Business House on firm foundations is applicable to all SMEs and Social Enterprises. We can help you do that.

No SME will obtain mid term financing whether by private equity or bank loan unless all the fundamentals for growth described in this booklet are in place. We can help you do that.

If you want to obtain a listing in London, we can help you do that.

Illustration

We are presently writing an Information Memorandum for a football reality TV programme where the collaborations mentioned in this booklet are being used and the Foundations for growth are being established as an integral part of the start up and fund raising of the initial seed capital.

The Brooke Consultancy is your single source, one stop shop that builds your **Big Business House** on strong Foundations and provides **Business Advice in the Round** with the following benefits:

- saves you time
- coordination of all requisite skills to provide integrated and targeted advice
- the advice is effective, efficient and dynamic

The Brooke Consultancy constructs a fence around your Big Business House to protect what you have and to be a safe place from which to launch the growth of your business. Investors need to feel secure and comfortable in the knowledge that the fundamentals for growth and risk management are in place.

The Brooke Consultancy will work out a price and will shape itself around your financial resources and cash flow.

We recommend that you take out legal expenses insurance to deal with claims that can arise from:

- Disputes with your co-shareholders or partners
- Claims from employees
- Product disputes with suppliers or buyers
- Enforcing your right to protect your intellectual property rights

All Entrepreneurs whether commercial or social or running a Hybrid need the Foundations mentioned in this Big Business House Foundations Document because potential investors must be secure and comfortable in the knowledge that the fundamentals for growth and risk management are in place.

Your business needs
Business Advice in the Round
available from one source
and that is The Brooke
Consultancy LLP

ANNEX 1

Lynne Brooke LL.B Solicitor



PROFILE

Lynne has been a solicitor for over 30 years, most of that time as a Partner and has wide experience of the law and its operation. The rule of law is a framework for Civil Society in which enterprises contribute to the wellbeing and wealth of its citizens.

To enable enterprises to be established in the commercial and Social Economy that focus on risk management and wealth creation, three years ago Lynne started The Brooke Consultancy LLP as a new type of Law Firm to provide Business Advice in the Round for small to medium sized enterprises.

Lynne established and headed a Corporate Group for a medium sized law firm for four years

The Brooke Consultancy operates internationally and presently has business in China, Australia, India and Africa.

Lynne has a wide range of experience in corporate and commercial law. He has dealt with startups, growth companies, articles of association containing special provisions, privileges and protections, public companies

worldwide in the resource sector, non-resident trusts, mergers and acquisitions, shareholders' agreements, commercial contracts of all types, licences and franchises. He has acted for companies on AIM and Plus markets and now that it's open to UK companies wishes to enable them to join the main market by way of a Standard Listing.

Lynne takes an active interest in the development of the Social Economy and has incorporated Community Interest Companies, advised and acted for charities and set up appropriate and sustainable structures. He believes that social impact investing will become a principal driver for investors.

Lynne has been a long serving trustee on various Charities. He is Vice Chair of Westminster Mencap, Trustee of Kith and Kids, Disability Law Service, Secretary of Lawyers for People with Learning Disabilities and founder trustee of Newham Riding School Association known as Docklands Equestrian Centre.

ANNEX 2 The Experts

Robert Schon

An eminent corporate and personal tax lawyer and tax specialist. *See Chapter 1*
robertschon@aol.com
www.robertschon.com

Ercan of Wellers

Business accountants. *See Chapter 1*
Ercan.Demiralay@wellersaccountants.co.uk
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Clem of The Penny Group

Technically skilled and an holistic approach to financial advice. *See Chapter 2*
Clement.Cowley@thepennygroup.co.uk
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Lynne Burns of Lynne Burns Law

A specialist who is acknowledged as a leader by the legal profession in all aspects of employment law including Employment Tribunal litigation and preventative training. *See Chapter 3*
lynne.burns@lburnslaw.com
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Rob Thacker of Pound Gates

An expert chartered insurance broker who identifies contractual risks and can arrange insurance cover and legal expenses insurance. *See Chapter 4*
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Rosemary Cardas of Keltie LLP

Ingenious trademark and patent registration that protects your brand. *See Chapter 5*
Rosemary.Cardas@keltie.com
www.keltie.com

Paul Gibson of Epilog Creative

Websites with creative graphic design that sell. *See Chapter 5*
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Nathan Haines of Element 26 Ltd

Social Media and Advertising – will promote your company’s visibility by video and use of social media. *See Chapter 5*
nathan@elementtwentysix.com

Michelle Peters of The Business Instructor

Business Growth and Marketing Strategies to attract more clients or customers and increase your profits. *See Chapter 5*
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