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Income Generation

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About Trowers & Hamlins LLP

- Full service city & international law firm, offices across UK
- Consistently ranked top tier in legal directories for local government, procurement, public and administrative law
- Established & advised on hundreds of companies for public and private sector clients



Common Queries

- Business case – what do I need to cover?
- What do we have a legal power to do?
- Do you need a company and if so, what kind?
- Do you need a Shareholders' Agreement?
- Are you opening up liability to employee claims?
- Will you be infringing intellectual property/state aid rules/other rules?
- What does a new business need to do?
- Will we have to pay tax?
- Will we have to follow public procurement rules?

Legal overview

- Fire Trading Companies
- FRA Powers
- Company Law
- Employment Law
- Intellectual Property
- State Aid

Why generate income?

- Austerity – adapting to address the funding crisis
- Greater commercial freedoms
- Generate income and utilise spare capacity
- Social return
- Local business

Deciding to embark on a commercial venture

- FRA needs to be clear on **what** it wants to achieve and **why**
- Effective business planning is paramount
 - Begin with an options appraisal
 - Outline Business Case to Full Business Case
 - Is a separate legal entity required?
 - Should it have social and community objectives as well as commercial?

Key Commercial Considerations

- Market
- Financial support
- Equipment and premises
- Branding, name, logos and uniforms
- Back-office services
- People
- Do you have the legal powers?

FRA Legal Powers

- Legal powers are key foundations for what you want to do
- Complex legislation, due to FRSA 2004 being later amended by Localism Act 2011
- FRAs may:
 - Carry out their **functional purposes** (core functions)
 - Do things **connected** with any of their functions
 - Do (for commercial purposes) what they may do under the above other than for commercial purposes
 - Powers are **in addition to**, not limited by other powers of the authority
 - **Charge** for activities where FRSA **expressly allows** and **subject** to FRSA restrictions

Company Law

- Choice of corporate entity
- Profit-making or non-profit?
- Commercial purpose?
- Company limited by shares or by guarantee?
- Limited Liability Partnership
- Shareholders' / Members' Agreement
- Funding / financing options

Creating an FTC

- Once FRA approves Business case, then FTC can be established.
- Most FTCs:
 - Companies limited by shares
 - Community Interest Companies limited by guarantee
- Consider who should be on the Board, members of the FRA operational staff from the FRS?

Running a successful FTC

- Develop and maintain commercial acumen and culture
- The governance structure should be flexible to facilitate the development of the FTC
- for the FTC – agree the board composition and chair. Select according to skills required
- for the FRA – striking the right balance between influence and control to enable the company to operate effectively and at arm's length

Employment Law

- The business case is evidence – be careful you don't give grounds for constructive dismissal
 - How will individuals be deployed?
 - Working for the FRA, FTC, or both?
 - How will time / duties be apportioned?
 - Are additional / new duties envisaged?
 - For example:
 - Marketing
 - Business development
 - Consider pensions early
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Intellectual Property Rights

- Important considerations, even before company formation:
 - Company name
 - Logo and branding
 - Trademarks
- This all feeds into the marketing strategy, so vital to get it right prior to launch

State Aid

- Potential for challenge where an FTC is supplied with loans / staff / assets by FRA for less than “market value”
- Current rules remain until 1 January 2021
- Enforcement by UK Competition and Markets Authority
- Private sector increasingly bringing State Aid challenges if they see playing field is not “level”

FIA / NFCC Guidance

- Covers the full life cycle of a Fire Trading Company (FTC)
- Considers research into FTCs by Grant Thornton
- Legal powers and framework
- Good practice and key considerations:
 - Governance
 - Staff
 - Branding



Any questions?



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