

---

## **ACCOUNTANCY BUSINESS DEVELOPMENT TRAINING PROGRAM**

### **PREPARING A CLIENT TO RAISE CAPITAL**

  
**Paper 501-090**  


### **CONTENTS**

	<b><u>Page</u></b>
1. Investment Readiness - What Is It? .....	2
2. Product - Technology - Innovation.....	2
3. Intellectual Property Control .....	3
4. Market.....	3
5. Management .....	4
6. Commercialisation Objectives.....	4
7. Sales Forecast.....	4
8. Business Model.....	5
9. Fund Raising Requirements .....	5
10. Small Scale Offerings .....	5
11. Offer Information Statement (For Raising Up To \$5M).....	5

### **ADDENDUMS**

501-090a	Suggested Treatment Of Intellectual Property Developed By An Individual Who Wishes To Raise Equity Capital .....	6
501-090b	Proposed Corporate Structures For Intellectual Property Company .....	7
501-090c	Confidentiality Agreement .....	8
501-090d	Assignment Of Intellectual Property Agreement .....	10

---

## **ACCOUNTANCY BUSINESS DEVELOPMENT TRAINING PROGRAM**

### **PREPARING A CLIENT TO RAISE CAPITAL**

**Paper 501-090**

#### **1. Investment Readiness - What Is It?**

It's very difficult for a small/medium enterprise to raise capital from the market or to obtain loan funds unless the applicant is able to exhibit:

- that they've developed a product/service/technology that is able to differentiate itself in the market place
- that they understand intellectual property protection
- that there is a market for the product/service/technology that the company is going to produce
- that there are customers willing to purchase the product/service/technology
- that the applicant has a management team capable of implementing the company's strategies
- that the applicant has prepared market research, business plans, budgets and cashflow forecasts for three to five years
- that the applicant has undertaken commercial training so as to exhibit a general understanding of the commercial and corporate governance procedures applicable to their type of business

When all of these things are put together, they indicate whether a company has achieved "investment readiness".

#### **2. Product - Technology - Innovation**

The applicant needs to be able to summarise the product/service/technology. What is its background? What problem(s) is the product/service/technology trying to address? Why is there a gap in the market for this product/service/technology to be required by customers?

Questions that the applicant needs to be able to answer include:

- What problems does the product/service/technology solve?
- How is it differentiated from competitors?
- What is the stage of development?
- What is the sustainable competitive advantage?
- Are there any regulatory issues relating to this product/service/technology?
- How substantial is the innovation? Is it a mere copy?
- Is it likely to succeed in the market place?
- Is the product/service/technology ready at this time? If not, when will it be market ready?
- Have independent technical assessments been conducted to field test the product/service/technology?
- Is it a stand-alone product/service/technology or will it form part of a product stream?

---

The applicant needs to carefully consider these questions and answer them in an honest manner as part of the preliminary assessment on the commercial opportunities that may be available to the company.

### **3. Intellectual Property Control**

What is the intellectual property that's been developed? Is there any protection for the intellectual property e.g?

- Copyright?
- Patent?
- Plant patent?
- Trade secrets?
- Trademarks?
- Confidentiality agreements?

Who owns the intellectual property? If the company that wishes to commercialise the product/service/technology does not own the intellectual property, how will the company being commercialised control the intellectual property?

Has the applicant considered having a separate company which would own the intellectual property and then licence it to another company, which would be the marketing entity?  
(Refer to [Addendum 501-090a](#) and [Addendum 501-090b](#)).

Have all employees and subcontractors, involved in the development of the intellectual property, signed Confidentiality Agreements ([Addendum 501-090c](#)) and Assignment of Intellectual Property Agreements ([Addendum 501-090d](#))?

### **4. Market**

Where is the market for the product/service/technology being produced by the applicant?

Who are the current customers?

Who are the potential customers?

Why does the applicant believe that the potential customers will purchase the product/service/technology?

What is the realistic size of the market?

Is there potential to export the product/service/technology overseas?

If so, to which countries? The applicant will need to prepare some calculations on the potential size of those markets.

Has the applicant developed any strategies on the planned route to market?

How is the applicant going to distribute and sell the product/service/technology?

Has the applicant prepared a summary of the differences between their product and competitors' products?

---

What customer support has the applicant received? Has the applicant received letters and testimonials from customers who have used their product/service/technology?

What's the WOW factor? Why will customers want to buy this product/service/technology?

## **5. Management**

Who are the key members of the management team? Even if the applicant hasn't employed the persons at this stage, describe the type of positions the applicant will need to fill, if they're going to successfully commercialise the product/service/technology.

The applicant should be able to identify key management positions including:

- Chief Executive Officer
- Research Manager
- Production Manager
- Marketing Manager
- Sales Manager
- Chief Financial Officer

(Some of these positions will initially probably be part time or external consultants.)

Has the applicant's current management team got the time and incentive to drive the commercialisation process?

Has the applicant prepared CVs for each of the key members?

## **6. Commercialisation Objectives**

What are the commercialisation objectives of the company?

Has the applicant determined how much capital they think they'll need to raise?

What will the capital be spent on?

Is the applicant prepared to allocate a realistic percentage of the company's shareholding to the investors?

Does the applicant understand that he/she will not own 100% of the company once it attracts investors?

Is the applicant comfortable with external Directors being appointed to the Board of Directors?

## **7. Sales Forecast**

Has the applicant prepared Sales Forecasts based on the domestic and international markets from direct sales and also through channel partners, joint ventures, licence fees etc?

Has the applicant prepared various Sensitivity Analyses on the percentage of probability of achieving the sales forecasts?

---

## 8. Business Model

What type of corporate structure does the applicant have in mind for the commercialisation process? (Refer to [Addendum 501-090a](#) & [Addendum 501-090b](#)).

## 9. Fund Raising Requirements

*The Corporations Act 2001* generally requires a company which wishes to make an offer of securities to investors to issue:

- a Prospectus;
- a Short Form Prospectus;
- a Profile Statement; or
- Offer Information Statement.

And specify certain disclosure requirements that have to be made to investors and to the Australian Securities & Investments Commission, unless the offer of security does not require disclosure under Section 708 of the *Corporations Act 2001*.

## 10. Small Scale Offerings

Section 708 of the *Corporations Act 2001* enables personal offers of a company's securities which do not need disclosure to investors or approval from the Australian Securities & Investments Commission if:

- no more than \$2M is raised in a twelve month period;
- the maximum number of investors in the twelve month period is twenty; and
- no advertising to the public.

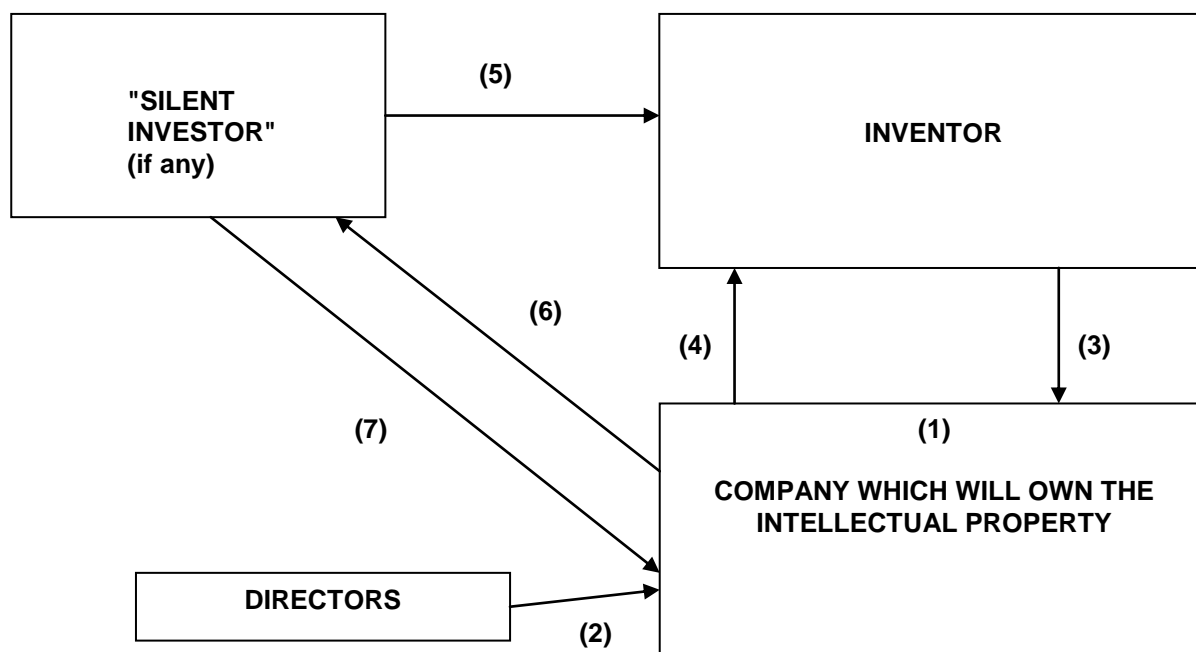
For further information, refer [Paper 040-060 - Fundraising By Private Or Non Listed Public Companies](#).

## 11. Offer Information Statement (For Raising Up To \$5M)

Under Section 715 of the *Corporations Act 2001* a company can raise up to \$5M from the issue of an Offer Information Statement. The Offer Information Statement must be submitted to the Australian Securities & Investments Commission and approved by ASIC before the Offer Information Statement can be released to the public.

The costs involved in raising equity capital by using an Offer Information Statement are higher than the costs involved in raising up to \$2M in a twelve-month period by reliance on Section 708 of the *Corporations Act 2001*.

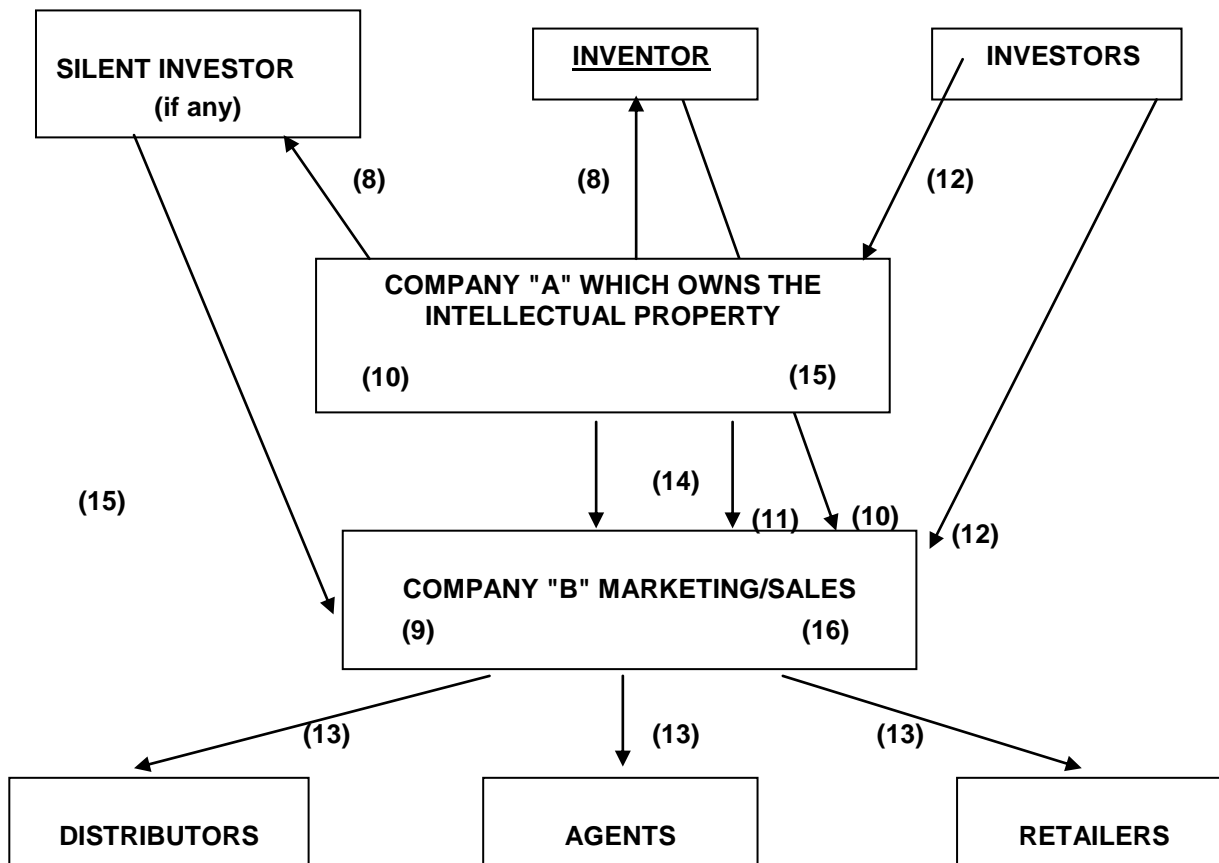
**501-090a    Suggested Treatment Of Intellectual Property Developed By An Individual Who Wishes  
To Raise Equity Capital**



Ref

- (1) Form a company.
- (2) Appoint the initial director(s) of the company.
- (3) Transfer the intellectual property to the company.
- (4) Shares in the company will be issued to the inventor. (At this stage the inventor would probably own 100% of the shares in the company unless the inventor had a silent investor).
- (5) If the inventor had a silent investor, he/she would probably have supplied cash to the inventor.
- (6) If there was a silent investor, the company would probably issue shares to the silent investor.
- (7) The silent investor may be appointed to the Board of Directors.

501-090b Proposed Corporate Structures For Intellectual Property Company



*This diagram shows the next stage when capital is being raised from investors.*

Ref

- (8) The company (now called Company A), which now owns the intellectual property, has already issued shares to the investor and silent investor (if any).
- (9) A separate company (called Company B) for the marketing and sales of the product/service/technology is formed.
- (10) The initial shareholders of Company B (Marketing and Sales) are the investor and silent investor (if any) in the same percentages as they own in Company A.
- (11) Company A (Intellectual Property Owning Company) negotiates a Marketing/Sales Agreement with Company B (Marketing/Sales Company).
- (12) Investors agree to invest in both Company A and Company B (same percentages).
- (13) Company B then appoints Distributors/Agents/Retailers etc.
- (14) Company A only contracts with Company B and should try to avoid any Agreements/Contracts with any other companies.
- (15) Company A becomes the wealth creation vehicle.
- (16) Company B should only earn a small profit.

**501-090c Confidentiality Agreement**

**THIS DEED** is made the            day of            20

**BETWEEN:**

(the owner)

of

**AND:**

(the confidant)

of

**RECITALS:**

**IT IS AGREED AS FOLLOWS:**

**1. Confidential Information**

- 1.1 In this Agreement, Confidential Information of either party means any information in any oral, written or other form about or belonging to that party.
- 1.2 Confidential Information includes:
- (a) Information about or belonging to entities related to or associated with a party.
  - (b) Trade secrets or know how.
- 1.3 Confidential Information does not include:
- (a) Information that, at the time it is received is known by the recipient to already be in the public domain.
  - (b) Information that has previously become known to the recipient in circumstances where no duty of confidence existed; or
  - (c) Information that is not identified as confidential and should not reasonably be considered as confidential at the time it is received.

**2. Confidential Information must not be disclosed or used.**

- 2.1 The parties each agree that they will not:
- (a) disclose the confidential information of the other party to any person and will take all reasonable precautions necessary to avoid confidential information of the other party being disclosed to any person(s); or
  - (b) use or reproduce (or allow to be used or reproduced) the confidential information for any purpose' unless:
    - (i) allowed by this agreement or;
    - (ii) the prior written consent of the other party is obtained.
- 2.2 Each party agrees that the other party may disclose confidential information:
- (a) to its employees, consultants or advisors to the extent that:
    - (i) it is necessary for them to have that confidential information disclosed to them for the purposes of the work that they are undertaking; and
    - (ii) prior to that disclosure, they are made aware of the confidential nature of the information.



---

(b) to the extent required to do so by law or because of the requirement of a government authority.

**3. General**

- 3.1 The parties agree that they may exercise any of their rights against each other, even if they have waived them in other cases in the past.
- 3.2 Only a waiver in writing signed by a person authorised to do so on behalf of a party is binding on the other party and then only for the particular case in which it is given.
- 3.3 Queensland Law applies to this agreement.
- 3.4 The parties agree to any legal proceedings relative to this agreement being commenced and heard in , in the state of .
- 3.5 Each party will pay its own costs in relation to this agreement.

**4. Interpretation**

In reading this agreement:

- (a) headings are included for easy reference and they are not to be used in interpretation;
- (b) singular includes plural and visa-versa;
- (c) reference to a person includes an individual, partnership or association;
- (d) if any part of this agreement is not legally enforceable, that part will be ignored, but in all other respects, this agreement has full effect;
- (e) a reference to confidential information includes any part of it
- (f) a reference to public communication includes any publication, article, media release, brochure, electronic mail, web site, correspondence, prospectus, advice or other form of communication or information;



---

### **AN IMPORTANT MESSAGE**

The forms and commentaries contained in this paper are provided as a guide only and should not form the sole basis for any advice in relation to the particular situation of any person without first obtaining proper professional advice.

This paper is provided on the understanding that ESS BIZTOOLS PTY LTD (ACN: 078 451 439) will not be responsible as a result of any use made by users hereof of the forms or commentaries of this paper without first obtaining specific professional advice. Neither shall ESS BIZTOOLS PTY LTD be responsible for any errors or omissions contained in these papers. ESS BIZTOOLS PTY LTD expressly disclaims liability whether under contract or negligence and whether to a direct purchaser of these papers or to any other person who may borrow or use them in respect of any loss or damage flowing there from whether direct or consequential. In particular and without limiting the extent of this disclaimer ESS BIZTOOLS PTY LTD accepts no liability if any form or commentary contained herein, whether used in its original form or altered in some way by the user, proves not to be valid or not to attain the end result desired by the user. This exclusion shall extend both to the user and to any client of the user who may suffer loss as a result of the use of these papers and it shall apply even though ESS BIZTOOLS PTY LTD may have been negligent in the publication or preparation of these papers. The user acknowledges that it has not made known to ESS BIZTOOLS PTY LTD any particular purpose for which these papers are required and that it has not relied on ESS BIZTOOLS PTY LTD' skill or judgement to provide a paper suitable for any such purpose.

### **INTELLECTUAL PROPERTY NOTICE**

The authority to use all copyright, trade marks and other intellectual property rights comprised in this paper is held exclusively by ESS BIZTOOLS PTY LTD (ACN: 078 451 439). Neither these rights nor any part of this paper may be used, sold, transferred, licensed, copied or reproduced in whole or in part in any manner or form whatsoever without the prior written consent of ESS BIZTOOLS PTY LTD (ACN: 078 451 439).