INTRODUCTION - BACKWARDS PLANNING -> ANTICIPATING THE VENTURE CAPITALIST

Paul Keating when introducing Capital Gains Tax legislation in the 1980's said "The 90's will be the decade of equity!" The present Liberal Government has recently introduced a considerable raft of industry assistance programs, one integral aspect of which is Venture Capital. As a means of stimulating industry development and especially small to medium enterprise, venture capital is a crucial component. Accordingly, the aspiring entrepreneur should put this venture capital process into the correct perspective. Outlining that perspective is the objective of this paper.

The entrepreneurial company seeking venture capital should prepare itself for the process of acquiring this particular kind of capital investment. By planning in advance, the investee can develop a healthy and helpful perspective on the process:-

- anticipating the normal procedures of due diligence in which the prudent venture capitalist will predicably engage in order to make the investment; and

- adopting those foreseeable structural aspects which are reasonable.

Most of these preparatory procedures are inexpensive and independently appropriate for the commercial health of the investee business in any event irrespective of whether that business actually seeks venture capital. Far from derogating from the investee's position, these steps actually assist and improve the investee.

By adopting these two (2) steps:-

- the position of the investee will be improved in respect of the eventual investment evaluation and the actual engagement process with the Venture Capitalist and especially with respect to the perspective of the principals of the investee enterprise who might otherwise be engaging concepts they would novel or even radical; and

- the documentation of the investment will be facilitated and the negotiating position of the investee significantly improved.

What Is Venture Capital?

The objective of the venture capitalist, to the extent that the investment is by way of an subscription in the issued capital of an investee company or units in an investee trust, is to become the partner of the original and future constituent members of the investee. Generally the venture capitalist will be a minority shareholder and director - a very vulnerable position. Essentially, the venture capitalist is backing:-

- the drive and vision; and

- management expertise,

of the investee business' principals intending thereby to earn a return considerably higher than might otherwise be obtained by investing in other more conventional areas. The objective of higher return objectives means higher risk.

The venture capitalist achieve their return as capital gain. The venture capitalist facilitates by the provision of cash, then harnesses the entrepreneurs underlying motivation - "to get rich". However, venture investors think of equity capital as risk capital because there is no guarantee of any return on their investment nor even of its repayment. By contract, debt has a fixed investment nor even of its repayment. By contract, debt has a fixed interest and a fixed term over which the money is lent.

For this reason, the venture investor will want certain contracts in place with the investee business to go some way to controlling its risk - and especially to ensure that the actual principals do not act in an unexpected, self destructive or predatory manner towards the venture capitalist, whose vulnerability is heightened by its minority status.

Accordingly, the venture capitalist will attempt to hedge this considerable risk that is associated with this manner of investment. By recognising the objective, mechanics and attendant risks which are at the essence of the venture capital process, an investee's business will:-

- encourage the venture capitalist by demonstrating an understanding and sympathy, if not an acceptance of the process that the prudent venture capitalist will necessarily go through in preparing the investee structure; and
- thereby enhance the prospect that the venture capitalist will perceive that this particular investee is practical and understands the commercial characteristics of the investment.

As well, and quite independently of whether a venture capital investment is either needed or sought by the investee company, actually adopting a structure which would otherwise be attractive to a venture capitalist, is a prudent step in the conduct of a small to medium enterprise. The health of the principal's commercial relationship will be significantly improved and even if the venture capital never arrives. Venture Capital will be anticipated by the investee preparing a business plan which will indicate:-

- how much capital the business can anticipate seeking; and
- at what intervals; and
- when the business can repay it; and
- at what rate of return.

The venture capitalist will decide whether the rate of return on its investment as predicted in the business plan is sufficient for the risk involved. If the decision is to invest then the venture capitalist must:-

- go through due diligence; and
- ensure the vehicle is investor ready.

Unless a Joint Venture Agreement between the principals of the Company is in place, an experienced Venture Capitalist would have proposed, on its own behalf and before the investment actually went into the Company, a Subscription Agreement very much along the same lines as the Joint Venture Agreement. As it is, the venture capitalist would have recognised key elements in the Joint Venture Agreement which the promoter would himself have wanted in the Subscription Agreement - regular board meetings and financial reporting to all members, job specifications, regular reports.

By adopting a Joint Venture Agreement, the promoters are anticipating the legitimate and predictable requirements of a venture capitalist and including them in their business structure in advance. This will enable the new company to have a definite advantage in the subsequent negotiations with a venture capitalist and over another (competing) business with whom the Venture Capitalist will have to educate and structure before investing funds.

By preparing their own documents in advance, the promoters will improve their negotiating position. Whilst the promoter does not wish to "rock the boat" unduly in the discussions with their prospective venture capitalist, the venture capitalist will not expect the investee promoter to "roll over and play dead". A venture capital investment is a business deal with which the parties will likely have to live for at least three years. Negotiations will provoke concession by the own various issues from both sides. However, by laying down in advance their own structure, the promoters will provide the starting point and the ground rules for the negotiations with the venture capitalist. By adopting the Joint Venture Agreement, the promoter will inevitably gain more leverage in the inevitable pre-investment negotiations.

The realistic entrepreneur seeking venture capitalist will recite the mantra "Prepare ye the way of the Venture Capitalist".

THE STRUCTURAL ISSUES

The investee business will need to present to the venture capital investor with a corporate structure with certain characteristics which will facilitate the investment, namely:-

- that the actual investee vehicle is capable from a legal perspective - of accepting an investment by way of a subscription for equity;

- that the assets which make up the balance sheet of the investee vehicle and have inspired the investment are actually legally and beneficially located in that vehicle so that the venture capitalist will have access to these assets both:-

  . as they exist when the investment is made; and

  . as they arise during the course of the investment,

  and especially as a result of the use of the venture capitalists funding, for example, as research and development funding thereby producing additional intellectual property rights;

- that the investment vehicle is a party to a joint venture arrangement which anticipates the arrival of a venturer capitalist who is most likely to be a minority:-

  - shareholder; and

  - director,

  and will accordingly want some enforceable contractual assurances on key issues to compensate for this political weakness and considerable risk profile.

By effecting these steps preferably at the start up of a venture, time, money and energy will be conserved. Given that we are now entering the second "golden age" of venture capital, with considerable management familiarity with such concepts as the "virtual corporation" now "venture capital savy" entrepreneurs should micromanage the structural biology of a project anticipating and adopting the venture capitalists anticipated list of requirements. Excuses for not adopting this approach are fast disappearing and venture capitalist patience for ignorance or argument on these fundamental requirements, is decreasing.

We shall now address each of these aforementioned issues in turn.

Investee Vehicle

The investee vehicle must have its equity in negotiable units. Accordingly:-

(a) a discretionary unit trust;

(b) a partnership; and

(c) an unincorporated joint venture,

will not be an appropriate legal vehicle into which to make the investment of venture capital since there is no negotiable unit for the constituent member to hold which is distinct from the other participants.

Essentially the aspiring entrepreneurs only realistic choices are either a:-

- unit trust; or
- a company.

These choices also raise an important legal issue for the entrepreneur, especially operating from start up, deal with the risk of establishing a venture - and prior to the arrival of venture capital. Given the considerable risk, for example, of technology driven start ups - an increasing trend has been to separate:-

(a) trading and hence risk activities into one entity; and

(b) asset holding into a separate entity.

Often two (2) vehicles are established with the assets including and especially intellectual property being assigned into a separate non trading entity, and then licensed to the trading entity. In the unwanted, but possible, event that the trading entity fails and becomes insolvent, then the licence from the holding company is terminated and the assets remain in the holding entity unavailable to creditors. As long as this procedure is established sufficient early in the entrepreneurial process, then it is unassailable. If this decision is done once creditors have been incurred it stands a sizeable chance of being overturned as an "uncommercial transaction".

Assets Properly Located

Ensuring that the investee vehicle actually owns the unencumbered legal and beneficial right to the assets it has identified in its Business Plan, is critical. These assets, and especially those of Intellectual Property are one of the most significant reasons the venture capitalist has invested in the first place. However, due to the illogical nature of intellectual property law, these assets often remain with the author if the intellectual property who is a shareholder or a director rather than the vehicle which is conducting the business - often at times, unintentionally. However, when an author realises this, unexpected negotiations often begin which may be embarrassing in the face of an impending investment.

Identifying that the vehicle legally owns:-

(i) real estate - can be easily corroborated through the Titles Office;

(ii) chattels - can be corroborated through the appropriate chattel registry and insisting on sighting ownership papers;

(iii) Intellectual Property. Intellectual property are a motley collection of rights associated with the protection of innovation and reputation. These are the legal methods by which the competitive advantage of a business may be sustained. There are essentially eight (8) kinds each with their own objectives, philosophy and rationale. Their coordinated location / ownership is essential and especially because these intellectual properties determine the point of competitive difference in the business which will ensure the business' survival and prosperity. The location and ownership of certain of these Intellectual Properties can be checked, namely:-

    - Trade Marks;
    - Designs;
    - Patents,

whose registration and ownership particulars can be verified through their registration on a public register conducted by the Australian Intellectual Property Office (AIPO) (now known as IP Australia). However and notwithstanding such verification by this public register, the ownership of these incidents should still also be corroborated through appropriate contracts assigning all the incidents of Intellectual Property from the authors to the company or trust with the appropriate warranties and covenants about future rights which arise during the course of the venture. However, appropriate contracts assigning the rights to the specific investee vehicle must be sighted in respect of:-

- copyright;
- confidentiality;
- goodwill; and
- future intellectual property (ie) rights yet to be created at the time the venture capitalist actually invests,

since these incidents of intellectual property do not have a public register. Only appropriately drafted contracts between the shareholders and directors and staff on the one hand and the asset holding entity on the other can assure the title to these rights being in the appropriate location within the corporate structure.

As well, the law associated with intellectual property do not respect corporate structures. Shareholding, unitholding or directorship will not, of themselves be sufficient to assign intellectual property developed by that person in that role and to which kind of distinct vehicle actually exits.

The location of the assets in the company will affect the value of the company. The valuation often determines whether the investment is made. Latter asset sales can produce capital for the company. However to sell, the company must own assets in the first place.

Hence these agreements should be adopted in any event because the principals, for their own relationship purposes, will require all their intellectual property rights in the one place. Certainly if the assets are not in place the venture capital subscription agreement would have to address this issue.

Vehicle Appropriately Structured

The vehicle for the project into which the venture capital is injected must be in the appropriate relationship with both its constituent members and directors. This theme will be more deeply examined in the following Section C. However, the vehicle needs to change the ordinary nature of its relation with its members and directors and otherwise provided by the Memorandum and Articles of Association and the Corporations Law.

The vehicle cannot be the extension of the majority of the directors and shareholders. It must have a "life of its own"; and from time to time be actually in conflict with the principals of the firm if those principals fall out of step with the project.

This agreement will deny the principals of the company bringing an application at some later time to liquidate the company if the continuation of the project does not suit the personal purposes of one or more of the principals. This agreement will anticipate the requirements of the venture capitalist in the Subscription Agreement.

The Dilution Factor - Successive Rounds of Venture Capital

One inevitable factor (ie rule of the game) which the entrepreneur must anticipate and accommodate - is the likelihood that the business will require successive rounds of investment. Studies have shown that before a project is mature and ready to go to a public float, up to seven (7) rounds of venture capital will be required. Often these investments will be made by more than just one venture capitalist. Each successive investor will likely acquire different conditions. A high growth business, if successful, goes back to the venture capital market repeatedly to fund the working capital requirements arising out of rapid growth. However, the main impact of the successive rounds is the effect of diluting the equity holdings of the original subscribers and founders. So, if the promoters were ascribed certain shareholders based on:-

- their original monetary investment; and/or
- entry into a service agreement or the assignment of actual or future intellectual property,

then it is unlikely that these promoters can continue to "keep up" and maintain party with future venture capital investments. The inevitability is that the promoters relative shareholdings are likely to decrease substantially.

The only effective protection aga inst this dilution is ensure the original promoters have a distinct class of shares which cannot be diluted. The other consolation for the diluted principal is to draw consolation from the provisions of the Shareholders Agreement - which will preserve voting power and participation of the principals and irrespective of the strength of the respective shareholdings. Shareholdings are essentially about income distribution and sale on exist - the power aspects are regulated by the Joint Venture Agreement.

GETTING THE BUSINESS INVESTOR READY

The Investee must recognise the need the adoption of a legal structure that introduces a greater degree of certainty about the complementary contributions of each principal to the scope of the business. After all, it is in these contributions, the venture capitalist is essentially investing. In general terms, the investee, in the likely event that the vehicle has a combination of participants each of whom bring on different but complementary skill to the Joint Venture. Joint Ventures are a concept which lawyers and businessmen have used in Australia over the last 30 years. A joint venture is defined as a commercial and legal combination of the persons working collaboratively towards a specific commercial goal. The various contributions of achieving the commercial objective is spread and facilitates the management and financing of the project. A joint venture can either be by way of:-

- a contract between the venturers for an unincorporated joint venture (ie with no company or trust as the overriding vehicle; or
- the venturers each taking shares in a company (incorporated joint venture) or units in a unit trust and then augmenting their usual relationship under the Corporations Law.

The Joint Venture Company which thereby conducts the incorporated joint venture will:-

- nominate a particular commercial goal; and
- is made up of the chosen persons who hold shares, and undertake as a prerequisite of this shareholding, to make contributions towards this specific commercial goal.

All of these aspects are actually the amendment of the standard "off the shelf" vehicle - company or trust deed, to particularise the transaction and make it more referable to the particular transaction with which we are dealing. This unincorporated joint venture is the vehicle most recognisable and acceptable to the venture capitalist.

Summary of an Investee Vehicle's Joint Venture Agreement

The restructuring structure of investee companies conducting a new project involves subtle issues of Intellectual Property, Contract and Corporations Law.

There are five (5) reasons for the adoption of a joint venture structure in anticipation of venture capital. Let us examine each in turn:-

- the vehicle for the project needs to be prepared in its relationship with its constituent members. The various incidents of Intellectual Property must be properly transferred into the Company from each member both at the inception of the venture and progressively as they arise and in the future and in respect of all future projects. As well, all commercial opportunities associated with the Intellectual Property must be retained by the company. This will ensure that the principals can pursue a commercial opportunity associated with the Scope of the Venture only through the Company and with reference to the other principals.

- implicit within the joint venture paradigm is the confirmation of respective contributions of the respective participants. When various parties become shareholders in a joint venture vehicle, they always do so on the basis of legitimate personal expectations about the operation and profitability of that venture. Those expectations are invariably not fully developed in the minds of the shareholders nor even expressed at the initiation of a commercial project. The business plan you are preparing is an opportunity to identify and fully develop those personal expectations. The Joint Venture Agreement actually moves identification to commitment in respect of these expectations. these legal commitments will be the basis of investment by a venture capitalist.

Accordingly and to reduce the possibility of future disputes amongst participants who have agreed to work together on an arranged basis, the precise definition of those tasks and decision making procedures is appropriate. This will ensure that those functional skills which are the foundation of the venture are committed to the project as the basis for the ongoing participation of the Venturers. In the event that a participant is unable or unwilling to continue to make the contribution which that participant committed to make to achieve the specific goal then an adjustment to that participants involvement, can be made;

- the method of management control of the vehicle for the venture has been settled by the negotiation and execution of this Joint Venture Agreement. The appropriate management structure developed in the Business Plan must be formally integrated into legal structure by amendment of the constitution of the participant companies and/or trusts. Such specificity reduces the ambiguities by requiring answers to questions that normally would not arise until the latter part of the commercialisation process. This will avoid disputes in the future and produce a higher clarity of understanding and acceptance of why and how people have come together for the objectives of the project. The behaviour of the participants in the project can be anticipated by this Agreement;

- the Company must address the principles of the Corporations Law which enable a disgruntled minority shareholders to complain to a Court about the commercial consequences of their minority position (i.e. they are not getting what they feel is rightfully theirs). These complaints can be the subject of lengthy, expensive and complex legislation which a fledging business can hardly afford. Given that a participant who is disgruntled can access powerful litigious rights of complaint, then the remaining participants must anticipate that complaint and provide for a contractual alternative to the statutory litigious remedies. Such litigation is expensive, slow, uncertain and destructive of the commercial outcome. Pretending that no participant will not consider the adoption of such remedies when disgruntled is a naive response.

Significantly, there are various objective standards which Courts in Australia have come to impose on the day to day operation of small promoter companies - which the Courts treat as "incorporated partnerships". These objective standards are in "silent conflict" with the personal standards which the various partner/shareholders would have or have already developed about the company, its operation, performance and future. The end result of such a conflict is that these objective standards can be made on the basis of:-

- an application to the court and under the Corporations Law; and

- by any minority shareholder of the company who feels the legitimate personal or objective standards have been oppressed by the majority of shareholders.

Nevertheless, it is acknowledged that the promoter in adopting those transformational structures is dealing with complex and unpredictable areas of Company Law, without the guidance of specific court decisions.

Accordingly, it is appropriate to settle and enter an agreement signed by:-

- each of the shareholders and their nominee directors who then become shareholders in the company; and

- the vehicle (ie company or trust) of which they are all members - shareholders or unitholders.

This agreement is generally called "a Shareholders Agreement" or "Joint Venture Agreement". It effectively constitutes the shareholders, directors and the company as "venturers" in the joint venture so constituted. Such an agreement anticipates the demands of the new enterprise culture - complicated enterprise, numerous competitive products and process, highly skilled participants, high level of competition and unstable market structures. The negotiation and implementation of such an agreement is a key component in putting the project in an appropriate management perspective. Each of the participants will learn more about themselves, their project and each other by even negotiating such an agreement.

Do not expect to set up a new enterprise without "a lot of strings attached". Assess the commercial risk by completing the business plan and then incorporate these commercial aspects into the company structure. Such agreement will enhance and protect the fledgling business. Properly negotiated and implemented, the Joint Venture Agreement will build a foundation of trust and co-operation amongst the participants from the very start - giving the business the best chance for success.

The essential five (5) factors to be addressed in the Joint Venture Agreement are as follows, namely:-

- what is the SCOPE OF THE COMPANY'S OPERATIONS - the precise legal statement of the commercial vision which founded the project in the first place. This statement will determine the commercial areas within which the various partners/shareholders must operate with each other and through the company and delineate those other areas which will enable the shareholders personally without reference to the company.

  Effectively, this contractual statement:-

  - will determine "who owns future commercial opportunities" which inevitably presents themselves to the vehicle and the respective participants as the project proceeds. Accordingly if an opportunity presents itself to an individual participant, that participant cannot go off and presume that objective individually but can only do so through the company or trust;

  - is linked with the Intellectual Property provisions and the restraint provisions (ie) all Intellectual Property created by the participants within the Scope of the Venture belongs to the vehicle at all times. This specific assignment is cross referenced with the Scope of the Venture so that the Intellectual Property is continually assigned to a separate holding entity. It ensures that this Company is the exclusive vehicle for the project and that in the event that a participant departs (voluntarily or involuntarily), the promoter cannot take any information, opportunities or clients away from the Company. This provides cohesion for the project and especially comforting for the venture capitalist as the respective principals cannot contemplate leaving and starting their own commercial opportunities and notwithstanding the investment of the venture capitalist is the original business.

This statement is generally reinforced by restraint provisions in respect of the future activities of a participant in the event that recipient departs from a project perhaps because of eviction for non performance.

For example, when the Saatchi Brothers were expelled from their multinational public company into which considerable investment had been made, their renamed CORDIANT. They eventually set up another advertising business again - in competition with their original vehicle into which investment had been formed. By this competition, Cordiant immediately lost business worth $112 million on 7% of its annual revenues. Investors in a new business ought never underestimate the value vested in specialist staff and participants in a business who could easily leave and become competitors, effectively undermining the original business. Anticipating and managing the departure of participants, is prudent and will otherwise be required by the venture capitalist.

Indeed as the enterprise develops, new corporate missions and goals may well be adopted to accommodate the evolution of the firms goals. However throughout there should be a linkage to both the intellectual property and the contributions of the respective participants.

- what actual CONTRIBUTIONS to the achievement of the Scope of the Venture are expected from each participant - it will be appropriate to write in job specifications to ensure the ongoing contributions by each partner/shareholder to the Scope of the Venture. Often these job specifications are interrelated with the shareholding to ensure that in the event that:-

    - these contributions are not effectively made; then

    - the shareholding of the non-contributing party is valued by a pre-agreed formula and sold to the co-shareholders.

Equity is used to compensate key executives and employees. Everyone in the company has a vested interest in increasing the company's shares. Profiles are not evaded by the executives taking high salaries.

The contributions which each shareholder, in their role as a joint venture participant brought to the project become the basis of the participants remaining a part of the project. Such provisions focus on the participants as the asset in the modern business organisation. Indeed a business is a portfolio of skills and capabilities, which in turn determine the markets in which each company can compete successfully. Corporate strategy is determined by the competencies of its personnel. Once the business plan has identified those competencies distinctive to the enterprise, the legal structure must ensure provision of those competencies through their specific incorporation as the basis for ongoing participation in the project. Management paradigm is management working thought and with other members of an organisational team.

Indeed, during the 1980's, venture capitalists often required these performances/forfeiture provisions extended further in their favour, namely if the company falls to meet certain earnings or other targets as specified in the original business plan then the promoter must forfeit some or all of the stock or forfeit control of the Board of Directors. Accordingly the provision serves as a "golden handcuff", motivating the promoting promoter to work hard at the contributions they agreed to make to ensure the project profits are earned. If performance guidelines are included, the innovative negotiator may acquire stock bonuses for performance which exceeds the earnings projections.

- How will THE COMPANY BE MANAGED - by whom are decisions made at Directors or General Meeting level or at Executive level? Confusion over this vital point is a common ground for disputes often leading to pre-emptive court applications, discussed above, which can threaten the solvency of the company in question. Schedules of particular decisions and who makes them and how they are made are decided in advance and settled in the Agreement. Decision making must be carefully defined.

For example, some decisions are fundamental to the relationship of the venturers and their conduct of the business that they should only be implemented after a unanimous decision. This will enable a minority shareholder, often the venture capitalist to block/veto a decision without making the decision, per se.

- EXIT and INTRODUCTION of participants - How will the valuation and transfer of shares be handled in the event a shareholder wants or is obliged to leave the project.

Dealing with the transfer of shares is a very sensitive area which if precisely documented can avoid applications to court to evict recalcitrant or non-performing shareholders. Veto and eviction and even the pre-emptive options of voluntarily departing shareholders require very precise documentation. This precise small print black letter law is essential because courts:-

- are reluctant to evict shareholders, a concept foreign to the provisions of the Corporations Law;

- require very precise specification of the procedures if indeed they are to grant a mandatory regulation or allow the "evictor" to operate under a Power of Attorney and thereby direct the "evictees" departure;

- these eviction procedures are generally on the basis that the shareholder receives the payment for its shares.

As well, it is a crucial area for venture capitalists who themselves are immediately looking ahead to the day when they can liquidate their investment in the company. Naturally the venture capitalist will not himself wish to find himself the subject of an involuntary eviction. Such rights must be carefully thought through - from the Company Code obligations to commercial efficacy.

Since the venture capitalists return is through capital gains, the exit mechanism is very important and is likely to be either:-

- an initial public offering; or

- by an acquisition by a larger corporation,

venture capitalists seek investments in growth companies or in leverage buy outs where there is a significant potential for growth in equity.

- The elements of INTELLECTUAL PROPERTY which are created by the various participants prior to or during the operation of the Project must be automatically transferred into the Company now and in the future.

Without formal assignment, the participants in accordance with the respective principles of ownership of the different elements of Intellectual Property - may retain certain rights personally - rather than ownership vesting in the Company. Accordingly, and in the possible but originally unintended event of that participant leaving the venture, the promoter or she would leave with those rights and be free to use them. These assignment provisions are generally linked with the restraint provisions, ensuring that each participant affords the Company a period after that shareholders departure as a participant during which period they will not compete against the original Company.

Only by preparing for the possibility of a chief rainmaker or contributor departing can those difficulties be appropriately handled when it occurs at a later point in time. The Agreement enables the shareholders to know exactly where they stand on all the fundamental points of the company's operation.

It ensures that the business will survive disputes between the shareholders and always hold the Intellectual Property which determines the future of the Company.

CONCLUSION - ANTICIPATION IS BETTER THAN CURE

The aspiring promoter of a new business venture has the right to expect advice from the professional advisers which adequately reflects the creative effort that the promoter has mustered in relation to the new product or service. The venture capitalist needs business building entrepreneurs. The investee will demonstrate that intention and capacity by having business building contracts in place.

In turn, the promoter of small to medium enterprises must accept the challenge of adopting those reformative legal structures. They may, at first glance, feel strange - even illogical. However, these structures enable the business to be both entrepreneurial and enterprising and deal with predictable "hot issues" before they become disruptive. Venture Capitalists dislike disruption and must provide contractual solutions to all the "cost issues" before they in fact arise. They want application and profit often from organisations whose technical skills are undoubted, but whose management acumen might be less reliable.

The uncritical adoption of conventional organisational models is an inappropriate response if the business anticipates acquiring venture capital. The proposed structures recognise that venture capital are generally available to firms most able to exploit quickly the opportunities. If the human element causes unforeseen difficulties, the legal structure set out in this Agreement is self correcting.

The structural demands for packaging the new venture require a more sophisticated response to the commercial and competitive challenges of today's ultra competitive business climate. Hence, the start ups who anticipates and actively and deliberately prepares the venture capitalists arrival is more like to secure the investment. They demonstrate an understanding about "How the game is played". The venture capitalist will be more likely to feel that "simpatico" from the principals of the investee company. The venture capitalist will be less of an educator of the fledging investee and can more quickly commensurate with the investee and its principals. Indeed, the investee can draw on the lessons of the 80's the first golden age of venture capital. Comfort inspires investment.

Indeed the legal structure per se:-

- at an early stage when the founders are funding the business can add value to management development by identifying strategies for dealing with potential problems and prior to the arrival of venture capital. The settling of such an agreement will develop a clear definition of the knowledge, skill and attitudes necessary for the business to be successful;

- must be, as such, "worlds best practice".

By insisting on a comprehensive, systematic and collaboratively settled Joint Venture Agreement, the commercial relationships are redesigned for business, management and leadership in the modern context. The venture capitalist wants to find and invest in companies in knowledge based competition, team work, speed and innovation. Prepare ye the way of the venture capitalist.

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