



Employment 101

When you start a business, the first question that is asked by a founder is should I be an employee or just work as a shareholder. Tax usually drives this decision. To begin with - it is common for a founder not to be employed but to essentially 'work' for 'sweat equity'.

The question is - when are contracts with employees and contractors required?

As discussed above - it may not be necessary to have an employment contract with a founding shareholder initially. This is ok so long as there are some contractual relations which make sure that any Intellectual Property the founder creates is owned by the Company rather than the founder themselves.

This is the same when engaging contractors. Early stage companies often outsource as an efficient and cost effective way of developing their product. It is very important that there is a contract (usually known as an intellectual property assignment deed) which transfers any intellectual property developed back to the company.

As the company grows - venture capital firms will require founders to have employment contracts. It is usual as part of a series A capital raise to have these in place.

Even though an early stage company feels like it is your own, it is key that thought is given to

the company owning what is created and not just the founder.

Similarly, when contractors are used as an easy way to bring in workers on an 'ad-hoc' basis, it is important to watch as to whether the contractors end up transitioning into employees. This usually happens if a contractor works more than around 6 months in a business (unless they are truly contractors and can, for example, delegate their services to a third party).

The reason this is important is that under Australian law, employees are entitled to things like minimum wages and other employee entitlements that contractors are not.

So we hope that the key takeout you will have from this chapter is to consider the type of relationship you have with workers and keep an eye on who own the Intellectual Property and whether a worker has transitioned from a contractor to an employee.

Key contacts



Michael Gonski

Partner, Sydney
+61 2 9225 5083
michael.gonski@hsf.com



Hannah Baker

Graduate, Sydney
+61 2 9225 5470
hannah.baker@hsf.com

HERBERTSMITHFREEHILLS.COM

BANGKOK

Herbert Smith Freehills (Thailand) Ltd

BEIJING

Herbert Smith Freehills LLP
Beijing Representative Office (UK)

BELFAST

Herbert Smith Freehills LLP

BERLIN

Herbert Smith Freehills Germany LLP

BRISBANE

Herbert Smith Freehills

BRUSSELS

Herbert Smith Freehills LLP

DUBAI

Herbert Smith Freehills LLP

DÜSSELDORF

Herbert Smith Freehills Germany LLP

FRANKFURT

Herbert Smith Freehills Germany LLP

HONG KONG

Herbert Smith Freehills

JAKARTA

Hiswara Bunjamin and Tandjung
Herbert Smith Freehills LLP associated firm

JOHANNESBURG

Herbert Smith Freehills South Africa LLP

KUALA LUMPUR

Herbert Smith Freehills LLP
LLP0010119-FGN

LONDON

Herbert Smith Freehills LLP

MADRID

Herbert Smith Freehills Spain LLP

MELBOURNE

Herbert Smith Freehills

MILAN

Studio Legale Associato in association with
Herbert Smith Freehills LLP

MOSCOW

Herbert Smith Freehills CIS LLP

NEW YORK

Herbert Smith Freehills New York LLP

PARIS

Herbert Smith Freehills Paris LLP

PERTH

Herbert Smith Freehills

RIYADH

The Law Office of Nasser Al-Hamdan
Herbert Smith Freehills LLP associated firm

SEOUL

Herbert Smith Freehills LLP
Foreign Legal Consultant Office

SHANGHAI

Herbert Smith Freehills LLP
Shanghai Representative Office (UK)

SINGAPORE

Herbert Smith Freehills LLP

SYDNEY

Herbert Smith Freehills

TOKYO

Herbert Smith Freehills