

Top ten legal tips for rapidly growing businesses

A Guest Article by Shainul Kassam
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Protect your company and avoid expansion pitfalls

Perhaps you had an innovative idea a few years ago and set up a business to exploit it. Maybe you handed in your notice, took your skills, knowledge and experience and began competing with your old employer.

What seemed like quite a risk has now substantially grown and developed into a profitable enterprise. You're well on your way to success.

You invested in legal matters when you started up the business, but now is not the time to be complacent, particularly in the current economic climate.

Here are our ten top tips for protecting your business and avoiding pitfalls as it expands.

1. Knowledge is power

It is likely that your confidential information (including pricing, customer databases and supplier lists) represents one of the cornerstones of your business. It is vital to protect that information, whether by confidentiality clauses and post-termination restrictions in your employment contracts or by use of non-disclosure agreements. You also need to be ready to take action if someone breaches their obligations. In the first instance, carry out an audit of your assets and liabilities.

2. Brand management

To save costs, you may initially have chosen not to register your brand name or logo as a trademark, but now it has actual value. Best to get an application in soon to prevent being caught out infringing someone else's brand. Your intellectual property (IP) rights will be easier to enforce if you do so. Again, you will want to protect all your IP sufficiently in supplier agreements, terms and conditions and employment contracts.

3. Know the employment rules

By now, you have a team of employees to support you. You may want to put in place a staff handbook to detail all your different policies and procedures. Also, you should consider a health and safety audit or a review of your employment contract. Social media is rife and an excellent business tool. But do you have a staff policy in place to protect your business reputation online?

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4. Get it in writing

Your terms and conditions may be suitable for a small business, but you're growing fast. Your range of products and services may be more extensive, or may have been superseded. It is important to define the duties and obligations of any relationship to prevent a dispute later. If you sell your products or services online you may need to comply with the Consumer Protection (Distance Selling) Regulations 2000.

5. The Bribery Act 2010

This legislation, which came into force in July 2011, has far-reaching implications, potentially as far as corporate hospitality. Not only is it illegal to bribe or receive a bribe; your company may also be liable for a failure to prevent bribery by those acting on your behalf, including employees, agents and consultants. Assess the risk in your organisation and develop procedures and policies to avoid liability.

6. Diminish your debtors

Failure to pay invoices will not endear you to your clients and can damage relationships and your cash flow. Communication is key. Ensure that you have a proper credit control system and remind/chase when deadlines are missed. If you need to take matters to court, instruct a solicitor or issue the claim online at www.moneyclaim.gov.uk.

7. Invest in technology

Your systems may now be outdated, or may have been designed for a start-up's capacity. IT supply and service agreements are complex and you need to be sure that the deliverables have milestones, testing and ongoing support.

8. Overseas expansion

If you have developed a customer base across the pond or in a neighbouring EU country, you may be thinking of opening a branch or international office. You will need to "think local" and understand your legal obligations regarding staff, employment and premises. Should you register a community trademark, as this will cover you in 27 EU countries? Will you set up a joint venture with a resident partner and, if so, what law will govern your relationship and disputes?

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9. Partnership issues

Chances are you started off a business with a partner and set up as a limited company with a 50/50 shareholding structure. Did you put a shareholders' agreement in place, or have you been putting off having that conversation? What happens when one of you wishes to exit or isn't pulling their weight? How do you deal with management issues if there is a deadlock on decision making? If you want to go your separate ways, how will you decide on a valuation of your shares?

10. Head for the exit

Your goal may have been to achieve a certain level of turnover and sell the business. If you have found a willing buyer, all is well and good, but this is just the start.

You'll need to be ready to deal with the buyer's due diligence investigation and queries. Have you thought about how best to structure the deal? Will you be tied into the business for a period of time post sale? Will you be restricted from competing with the business, or indeed from contacting clients, customers and suppliers?

Will the sale price be paid up front or deferred? How will you protect yourself from a purchaser who doesn't pay? How can you best limit warranties and indemnities given by you in respect of the business?

What next for you?

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