

7 key legal steps to starting a business

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Starting a business is hard work. There's lots to do and plenty to spend your money on. So how do you know what to do and where to start? In this article, we'll briefly look at the top 7 key legal steps to take when starting a business.

Each business is different, but often the most important things are: structure, co-founders, workers, intellectual property, contracts, leases, and special requirements.

1. Structure

Getting the right structure for your business is crucial. You might be a sole trader until you make some progress, and then you might incorporate a company. A limited liability company has some big advantages – it can help the business grow while protecting your personal assets.

It's generally best to start a company if you have co-founders or are looking for investment. You can incorporate a company yourself on the Companies Office website for a small fee, or you can get professional help. It can be worthwhile asking a professional to check the structure and shareholdings before incorporating, to avoid issues and costs later on.

2. Co-founders

If you do have co-founders, you can set ground rules, by negotiating a shareholders' agreement or constitution. These documents set out how you will work together, and can be invaluable if you later get into dispute. You'll want to cover different topics, including director appointment, decision-making powers, share issues/transfers and any vesting or restraints of trade.

You might not be at a stage where you can pay for good legal advice. That's OK, but as a minimum you should talk it through with your co-founders and check you are all on the same page. Co-founder disputes can be one of the most common and damaging issues for a business. You might like each other now, but a lot can change over time – one co-founder might leave, or be unable to continue due to poor health. Thinking about different scenarios now can make them easier to deal with if they arise later on.

3. Workers

You may want to hire workers – either as employees or independent contractors. There is a crucial difference between the two, and getting it wrong can easily lead to fines and disputes (or worse). It's very common to see a business hire an "independent contractor", but treat them like an employee, which doesn't end well for anyone. Make sure you understand the difference and get clear, well-drafted contracts signed with any workers.

4. Intellectual property

The value of many businesses lies in intangible assets – i.e. intellectual property (IP). When you're starting a business, you may only have an idea – which isn't IP, and usually doesn't yet have any real value.

However, if all goes well, the value of your IP will grow quickly. This means you need to understand your IP and take steps to both protect it and get the most out of it. One simple step is to make sure anyone working on the business adequately "assigns" their IP, so that it's owned by the business. This applies to any co-founder, employee, contractor or volunteer. Beyond this, it's worth creating an IP strategy – either with assistance from a qualified IP expert, or by yourself after some solid research. The Intellectual Property Office of New Zealand (IPONZ) website is a great place to start.

5. Contracts

Contracts are vital for any business. A contract is really just two people (or businesses) agreeing to do something. So you need to make sure contracts are clear as to "who does what when". There are also some really useful clauses you can include or exclude, like limiting your liability to pay the other person if anything goes wrong. It is vital to know when to get an agreement in writing – and to make sure you read and understand anything you are asked to sign.

6. Leases

If you can't work from home, you might lease some premises – as an office, café, factory or store. A lease can have big implications and can be a significant financial commitment, so it's worth making sure the lease works for you. It's important to obtain an appropriate term (and rights to renew), and to clarify the rent, outgoings and rent reviews. You will also want to understand your normal obligations under a lease, particularly around personal guarantees and reinstating the premises at the end of the lease. A lease can be a source of expensive and frustrating disputes if you don't get it right before signing.

7. Special requirements

Many businesses can get by without specific legal advice during the very early stages. Normally it makes sense to really validate your idea and your customers before spending thousands of dollars setting everything up perfectly.

But for some businesses, you do need to get proper legal advice early on. If you've developed technology that could be patentable, then you should get expert patent advice before you do anything. Some businesses may need expert advice on securities laws to see whether the proposed business model is feasible. If you're selling certain goods like food or alcohol, you'll need to comply with relevant laws and local regulations.

Where to next?

The advice you need really depends on what exactly your business is doing. Remember that not all lawyers are equal. For some advice, you may need a specialist lawyer, or a consultant (who might not be a lawyer). In other areas, some DIY research and free templates might be sufficient for now.

If you're starting or growing a business, keep these 7 steps in mind to check how you're doing. This should also help you know when to reach out for help. If in doubt, ask a friendly lawyer – this article just scratches the surface.

Wade Pearson is an Associate in law firm Gallaway Cook Allan's commercial team in Dunedin. This article is general in nature, so don't use it as a substitute for legal advice.