BUSINESS GROWTH

A How-To Guide From The Legal Director

Business Growth

Every business needs to think about, and then plan for, the most effective way to generate growth and be profitable and sustainable. Amongst considerations such as finance, HR and logistics etc., an effective plan should anticipate the legal, operational and perhaps even regulatory (e.g., local government and licensing) considerations likely to arise as the business grows.

In this guide, we will highlight some of the key areas in your business potentially impacted by business growth and offer some suggestions on how to:

- Create the right structure in your business that will support growth and encourage investment;
- Manage the legal aspects of growth effectively;
- Reduce business risks and costs;
- Avoid the pitfalls that disrupt and jeopardise growth.

If you have any questions or would like the support of one of our Client Legal Directors to manage the legal work in your business and free up senior management time, please contact us on 020 3053 8613 or email us on info@thelegaldirector.co.uk.

Business Structure

It is imperative that the framework of your business supports orderly growth from the outset and there are steps you can take to facilitate this.

Set up a limited company

If your business is young, you may be operating as a sole trader. Even if this under "DBA" (doing business as), you are still personally liable for the business's obligations. This model is therefore less appropriate for ambitious, growing businesses.

Establishing a limited company will not only give you a degree of protection, but it will also provide a suitable structure to bring in future outside investment.

Maintain good records

A well-managed business is better able to bring in outside expertise, retain its best employees, attract funding, and ensure long-term sustainability. Key to this is keeping your corporate housekeeping up to date. These include:

- Board and shareholder resolutions
- Dividend and income declarations
- Minutes of all meetings

Our Governance, Compliance and Risk guide gives more in-depth information about how to establish the structure of your business and its board and how to introduce good corporate hygiene.

Consider a shareholder/ co-founder agreement

If you're in business with others, you ought to consider whether you need a shareholder agreement or whether your company's articles of association provide sufficient protection.

A shareholder agreement is simply a contract between all or some of the shareholders of a company that sets out your rights and obligations in relation to that company and its business. A properly drafted shareholder agreement will give all parties confidence that the business and their investment are protected.

It is not a legal requirement, however, and not all businesses need one. Both the Companies Act and a company's articles of association provide some shareholder protections which may be sufficient. If, however, you want to provide additional security to yourself and your shareholders then you should consider a shareholder or co-founders agreement.

If you are unsure about what is the best option for you, please do get in touch. An investment in getting it right at this stage, could save you considerable time and money in the longer term.

Employees/Staff

As your business grows, your resourcing requirements will inevitably change, and you will need to consider carefully how you employ or engage staff.

Familiarise yourself thoroughly with your employees' contracts and keep abreast of employment law changes, which are happening apace since Brexit.

Planning for growth in advance will stand you in good stead. Consider these questions:

- Can you require your employees to work overtime?
- Are there collective agreements, maximum working hours, minimum rest breaks that you need to adhere to?
- Are there additional health & safety rules?
- If you need more staff to help with additional work, how do you engage them? On a permanent basis? On a temporary basis? On a zero hours contract?
- Do you need to notify HMRC?
- Have your reporting requirements changed because your business has grown?

If you need help with any employment issues, or would like to implement a robust and living people strategy, do get in touch. We work alongside your HR team and directors to help shape strategy and design and to put in place best practice that allows you to focus on revenue generation, profit protection, competitive advantage and sustainable growth. You can also have a read of the Your People guide, which explains in more detail how to manage your employee resources.

Suppliers

To manage growth successfully in your business, you need to have clearly defined relationships with your suppliers. Though it is unlikely that all your suppliers will trade on your terms, it is still necessary to have standard terms of trade in place as early as possible. This will give you additional controls over operational matters.

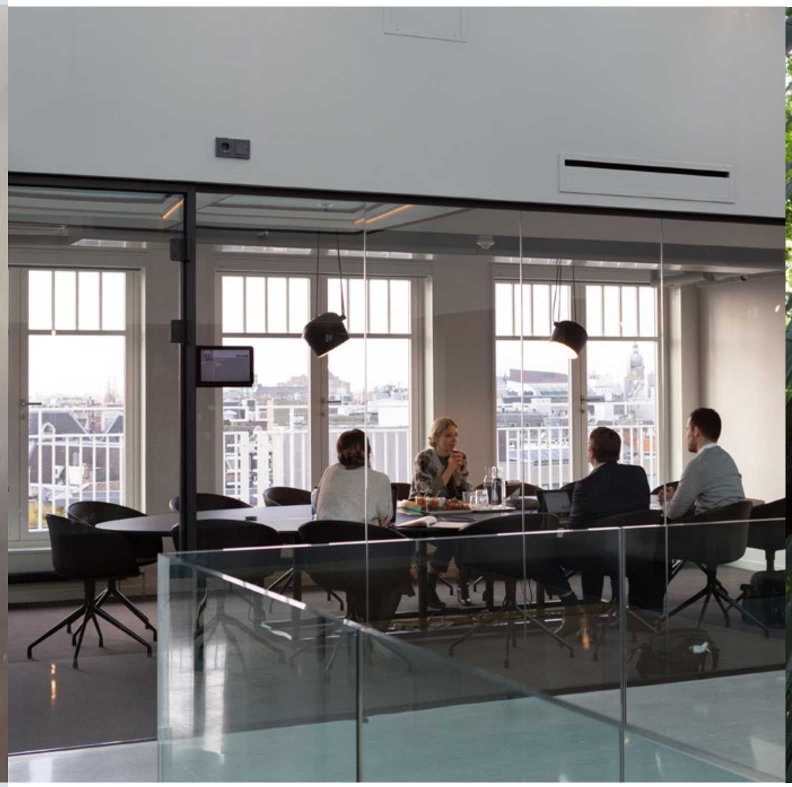
Ensure that you are familiar with the terms of the contracts you have with suppliers. If you are growing rapidly, it is particularly important to know whether you can call off more product quickly enough to meet increased demand. Is there any provision if your regular supplier can't deliver? If an alternative supplier needs to be used, and their prices are higher, can you reclaim the difference or do you absorb those costs?

Thinking about these issues in advance will help buffer you against some of the risks associated with business growth. If you would like our support preparing standard terms & conditions, or reviewing existing supplier contracts, please do get in touch.

Customers

Similarly, you need to look at, and be familiar with, your customer agreements. It is necessary to have up to date terms of trade that adequately reflect your own risk profile – do not be tempted to use off-the-shelf customer agreements.

You may well have different types of customers (governmental, consumer, commercial), or customers based in different jurisdictions. If this is the case, you will need more than one set of terms & conditions. Make sure that your employees know which to use in which circumstances.



Intellectual Property Rights (IPR)

SMEs that leverage their intellectual assets increase their opportunities for growth and their ability to license technology, establish partnership agreements and attract investment. The IPR decisions you make in the early stages of your business can have significant ramifications down the line so it's important that you identify and protect them from the get-go (through registration, contracts and practice) and maintain the necessary due diligence.

Your licensing, contractor and employment agreements must contain suitable IPR provisions to ensure that the business owns the IPR, rather than any individual or individuals. Be particularly vigilant if you need to take on contractors or consultants to meet a spike in demand for your service.

Our Intellectual Property guide gives specific and thorough guidelines on how to implement best practice in this area in your business.

IT

Do not assume that the licences you originally buy for your IT will be sufficient as your business grows. You may have enough for your actual headcount, but will that cover anticipated growth? Make sure that you identify someone within the business to take responsibility for this.

Inevitably, business growth equates to increased working hours for owners and managers. This may impact your IT and it is worth checking whether your licences impose any restrictions on where the work can be done.

Insurance

Unless you're a one-person operation, you will generally be required to take out employers' liability insurance and it is vitally important that the policy limits, terms and exclusions are kept under constant review as your business grows.

Here are some questions to consider:

- Do you have, or do you need, public & products liability insurance?
- Do you have cover if you provide a service that another person says caused them loss or damage?
- If your business has undergone rapid growth or significant change since you took out your policy, have you made your insurer(s) aware of the nature and extent of the changes?

Underinsurance is a significant issue and risk to your business so make sure you have a broker you can trust to advise you on what cover, what scope and who you should ensure.

GDPR

Your data holding responsibilities will vary depending on your size and it is worth familiarising yourself with the legislation to ensure you are fulfilling your responsibilities as your business grows.

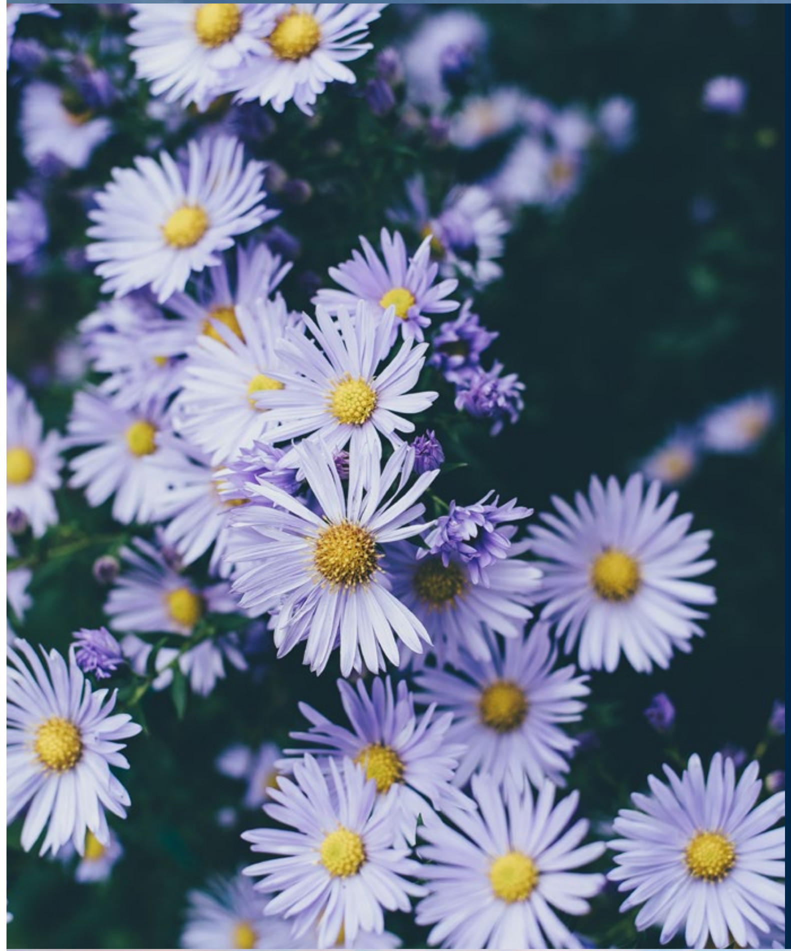
Originally introduced to Parliament in July 2022, the DPDI (Data Protection and Digital Information Bill 2022-23) was updated in May 2023 with the aim of lightening the administrative burden on businesses. For companies with fewer than 250 employees (who do not conduct high risk processing) there will no longer be the need to maintain records of processing activities.

Remember, if you hold or do anything with personal data while running your business, you need to register with the information commissioner's office.

Business disclosures

Limited companies, partnerships, and unincorporated entities such as sole traders must disclose certain information about themselves on their emails, websites, invoices, stationery etc. These requirements are set out in various pieces of legislation including The Companies (Trading Disclosures) Regulations 2008 and include such things as the full name of the company, its registered Office and company number.

Complying with this legislation helps reinforce your identity (or brand) in the market and is therefore a necessary part of creating the strong foundations that will encourage growth and reassure investors.



How TLD can help

Getting things right from the outset has innumerable benefits for your business. Business expansion must be funded, and keeping complete, accurate and reliable records and following best practice in your contracts, policies and procedures can make you more attractive for future investors.

Our experienced, in-house lawyers can be embedded in your business on a part-time, retained basis to help you establish a sensible structure and good governance which will support business growth and help you to you avoid costly pitfalls. This resource can be scaled up as your business grows.

If you would like some help establishing best practice in your business, please do get in touch on 020 3053 2613 or info@thelegaldirector.co.uk.

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