

Entrepreneurs, don't fear the legal nitty-gritty, embrace it

Inventory, wages, premises and cash flow are just a few of the concerns shouldered by the modern-day entrepreneur. While these are very real concerns, there is a potentially bigger challenge awaiting many start-up business owners who simply are not getting the necessary legal foundation to underpin their future success.



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There are a number of reasons why small businesses are not seeking out legal advice. Andrew Allison, company secretary for opinion mining start-up BrandsEye, believes that entrepreneurs are not always aware of what he calls the 'unknown unknowns'. He says: "These are the things that if you are not legally trained, you are not going to spot." In addition, Allison says many entrepreneurs believe the cost of legal assistance is prohibitive and, finally, many small businesses just do not know how to go about finding a suitable law firm.

Although seeking legal advice is not always a start-up's first priority, a legal mistake early on can prove to be costly, if not fatal to a business. Aalia Manie, senior associate at law firm Webber Wentzel, says: "There are several avoidable mistakes that, if a firm seeks legal advice right from the start, can be avoided or inexpensive to fix."

A good legal foundation will not only reduce a business's risks and save it from potentially costly mistakes going forward, it will also improve a company's sustainability and make it a far more attractive to potential investors, agrees investment partner at Knife Capital, Andrea Böhmert.

Where to start

Getting the legal bases covered should not be an onerous undertaking. Allison believes the first step for any firm is to ensure that all paperwork is in good order. "My advice is that all entrepreneurs should focus on documentation and ensure all their record keeping is in place. I urge small businesses to keep copies of their signed contracts with their employees, suppliers, clients and landlords. These should be signed by both parties and be easily accessible by multiple people. If a company can start by having those, any lawyer is going to have a much easier time getting their heads around the state of the business."

Böhmert then urges entrepreneurs not to download templates from the internet. She says often these templates are not South African, but from countries like the USA so they do not apply locally, which can ultimately be very damaging to a start-up in the long run. Manie agrees and cautions against the use of generic templates that have not been tailored by professionals who have a thorough understanding of the nuances and specific risks faced by that business.

As an investor, Böhmert believes passionately that there are three key contracts that every start-up business needs to have in place from the start. These are the initial shareholder agreement, employment agreements with a special focus on the executive team, and intellectual property assignments. “When it comes to those key agreements, it is critical to go to a reputable law firm and get sound legal advice,” stresses Böhmert.

Manie adds that start-ups also need to ensure that business have valid legal rights to use their trademarks and technology, because having to rebrand or find replacement technology can be a costly affair - more costly than the initial legal advice - and can cause reputational harm or business interruption.

Finding the right legal practice for your business

The challenge facing most businesses is where to even start looking for a suitable legal firm to represent their interests.

What is generally agreed is that small businesses need to find a law firm that specialises in the full spectrum of commercial law and related legal fields. But Böhmert goes one step further and says: “Find a reputable law firm, and then find out if they have dealt with entrepreneurs.” She explains that the legal needs of large corporate companies are very different to the needs of entrepreneurs and start-up businesses.

Manie says a business’s choice of law firm is also dependent on their legal needs. “At every stage of your business, your legal requirements are going to be different and if you want to limit risk and leverage opportunity, you need to find a law firm that will take into account your particular life stage, your cash flow and how they will deliver their advice. The law firm should also ideally have as many experts under one roof as possible. So, for example, if you're a HealthTech startup looking to expand globally, your firm should ideally provide access to specialists in health regulatory, intellectual property, tax, exchange control, and data protection – and links to reputable foreign law firms who can also advise on those aspects.”

The general agreement is that small businesses need to forge relationships with a legal firm and grow the relationship. “Initial legal fees should not cost you that much if you build a good relationship with a law firm from the start,” says Böhmert. “When things become more complicated, that is when the law firm will start making their money.”

Allison agrees and says that entrepreneurs need to explain their financial situation to their lawyers and say: “We hope in time we will become a lucrative client for you, so would it be okay to bump the occasional query past you or send you the occasional contract to review?” And then build the relationship from there.

With this long-term relationship in mind, Manie encourages entrepreneurs not to discount the services of premium full-service law firms. She notes that Webber Wentzel has historically worked with and lobbied for many entrepreneurs, and has recently launched a programme especially to service this niche sector. Webber Wentzel’s initiative, Ignite, offers a legal incubation programme for entrepreneurs.

With a range of legal options available to entrepreneurs, getting the right legal advice should not be daunting. Manie concludes by saying: “Businesses really need to be open to the fact that a legal foundation is important and needn’t be as expensive as people think. There are many entrepreneurial and practical lawyers out there, and we’re hoping that more large firms who offer a wide range of specialist services will become more entrepreneur-friendly.”

For more information on Webber Wentzel Ignite, visit www.webberwentzel.com.

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