

This is our checklist of some of the issues to consider when starting a business.

Brand name – check that the brand name you wish to use is in fact available for use by you, without legal challenge

As a starting point this requires a search of the Australian trade mark database.

The fact that a company or business name is available for registration does not give you protection against trade mark infringement if the brand name you have chosen is the same or deceptively similar to an existing registered trade mark that is in the same or closely related class of goods or services.

We also recommend that a Google search be undertaken to see if there are any existing unregistered trade marks in use, as the owners of so-called common law trade marks have rights too. And don't forget to see whether a domain name that corresponds to your chosen brand name is available.

In general, it is better to choose a brand name that is distinctive, unique or made-up. That is, not descriptive of the goods or services you will be providing to customers. That way it is more likely that you can register a trade mark. If the brand name is generic or descriptive it will be likely to be refused registration.

Logo design – if possible try to have the designer assign the copyright to you

Usually, the logo designer will grant you a licence to use the logo they have designed for you. That means if you want to make changes to the logo in the future you have to come back to the same designer to carry out the work. If you can have the copyright in the artwork assigned to you and the designer waives their moral rights in the artwork then you are not restricted going forward if you want someone else to make minor updates or modifications to your logo design.

Use of stock images on your website – make sure you are appropriately licensed

If you are obtaining stock images from the Internet make sure that you have the right licence from the copyright owner to use them. Otherwise it is likely that you will receive a legal letter of demand from the copyright owner claiming infringement of their rights. If you're lucky they may offer to settle the matter for payment of the correct licence fees, without claiming legal fees or other damages.

Structuring – selecting the right legal structure

This will also involve taking proper, considered advice, from your accountant or tax advisor.

From a legal perspective, we generally dissuade business owners from trading in their own name (i.e. as a sole trader) or trading as a partnership of individuals. The reason is no limitation of liability for the individuals. If the business becomes insolvent or there are unexpected claims not covered by insurance, then assets that are personally held may be at risk from creditors.

The right structure may be a company but consideration needs to be given to the right entity to hold the shares. Shares held by a discretionary trust with a corporate trustee may work better for asset protection and tax planning purposes than shares held in your own name.

Also, classes of shares may be an option where you have one shareholder who is not investing cash but “sweat equity” for the venture. The class of shares could be a converting redeemable preference share that converts to ordinary shares once the agreed “sweat equity” milestones have been reached.

Shareholders agreement - a key contract to have in place

We consider this is the number one foundational contract you must have if going into business with others

See our [shareholders agreement FAQs](#) and blog on this topic.

Employment contracts – for key staff, including the principals

Proper advice should be obtained from an employment lawyer. We are not employment lawyers but can assist you in providing the names of some good lawyers in the field.

It is important that the employment contract deals with the following things in addition to the technical employment law considerations:

- Probationary period (if appropriate);
- Notice period – what period is fair and reasonable from both sides;
- Restraints – only restraints that are reasonable may be upheld, so it is important to consider not only the length of time but geographical restriction;
- Confidentiality of company information;
- IP – assignment of intellectual property created by the employee and waiver of their moral rights; and
- Bonus arrangements – potentially this can be done on an annual basis via a separate but agreed document as part of the annual review cycle.

Insurances – consider what insurances are necessary and if necessary take advice from a good insurance broker

The types of insurances you may require will vary depending upon the type of enterprise you are conducting. Here is a non-exhaustive list of insurances that you should speak to your insurance broker about:

- Public and product liability;
- Workers compensation;
- Directors and office bearers liability; and
- Cyber insurance.

If you are leasing premises then the landlord will want to ensure that you have insured your tenant's fixtures and fittings and have public liability insurance in place, noting the landlord's interests on the policy.

Lease of premises

See our [checklist](#) on entering into a commercial lease as a tenant.