

10 Tips for Business Start-Ups

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I saw *The Social Network* recently and really enjoyed it. It's a good story, well told (and well acted). Unfortunately, there aren't that many Facebook-type success stories out there, so I wouldn't use it as a model for your typical business start-up. No business plan, no shareholder agreement and no IP protection, or at least nothing that was visible in the movie.

So you and your buddy have decided you're going to finally take the big leap, quit your day jobs and start up that new venture you've been talking about for awhile. That's good. You've got your business plan, you've put together some start-up cash and you've got a line on some space. It seems like you're ready, but how do you know what comes first?

Getting launched is the culmination of a number of small steps. Here are 10 for you to think about:

1. Manitoba, Canada or the World? Is your business going to operate only in Manitoba or in other provinces or even countries? This impacts a number of things, but most importantly, do you need a name that's reserved just in Manitoba, or Canada-wide? There are lots of business names out there; registering yours could take a surprising amount of time.
2. Do You Need a Company? More often than not incorporating a company is the right step, but in some circumstances a proprietorship, partnership or limited partnership can meet your needs. You'll need to discuss the pros and cons with your business lawyer.
3. Who Owns the Shares? Think about who the shareholders will be and what percentage of the business each will own. It may seem unimportant now, but giving away percentage points "just because" can make a big difference to you in 10 years.
4. Shareholder Agreement. While we're on the topic of shareholders, don't forget about the Shareholder Agreement. Start-ups sometimes skip this step thinking it can be worked out later. But my advice is, don't wait. Even if you keep it simple, it (likely) will be better than not having anything at all. [Stay tuned for an upcoming post on issues to consider in a Shareholder Agreement].
5. Officers. Choose the right person for the job, but don't sweat over it. It's easy to change. And remember, titles can be important to some people, so use them as currency if you need to.
6. Financial Institution. There is no magic to this decision for a start-up. If you already have a banking relationship, stick with it. The exception is if your business is in the technology or life sciences sectors. Some financial institutions don't have the experience (or programs) to be of assistance in

these areas.

7. Accountants. If you are likely to get big relatively fast, if you are going to be selling cross-border or internationally, then stick with one of the big 5. Otherwise, small is fine, at least for now.
8. Intellectual Property. Is it sufficient to register your business name, or do you require trademark protection for your name and logo? Does your business concept include IP that should be protected with a patent application before you start operating? And if you do have valuable IP, there is the question of who should own it – the operating company or another entity?
9. Material Contracts. You'll need an employment agreement for your employees (if you have any) and a non-disclosure agreement and confidentiality agreement (NDA) for your employees, suppliers, contractors and anyone else who comes into contact with your IP. You need to know that unless you have a contract that provides otherwise, the law may give ownership rights to someone who does work enhances your IP. This could include, for example, the guy who builds your website [See www.bizlawblog.ca post May 13, 2010]. Also make sure that your business lawyer reviews the lease for your space before you sign it.
10. See a business lawyer. Not a family lawyer, a criminal lawyer or a litigation lawyer. You'll find it easier to navigate the process with the assistance of a lawyer with business law expertise. Almost any lawyer can incorporate a company, but you want someone who will help you not only with what you need to know now, but what you'll need to know in the future, and what you need to be thinking about to be successful. An experienced business lawyer will be able to alert you to relevant government financial assistance programs and assist with introductions to key relationships.

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