

Technology & StartUps: Legal Considerations

At Hillhouse Legal Partners, we provide extensive industry knowledge and expertise to the Technology and StartUp sectors. We act for all types of businesses across various industries from small startups through to listed multijurisdictional corporations. We appreciate the nuances and challenges of operating a technology business within an ever-changing commercial landscape. We have developed a checklist of key legal considerations for individuals, partnerships or companies in, the startup or growth phase of their business lifecycle.

Is your structure effective?

A business structure is more than simply incorporating a company or establishing a trust. An effective structure can protect you and support the long-term success of your business.

We work closely with taxation and financial advisors to ensure your business and personal structures are appropriately established and tax effective.

We also work with those who have already set up their structures, in consultation with their advisors to assess whether changes would provide additional taxation, compliance, cost or asset protection benefits.

- ◆ What asset protection do you have and is the family home protected?
- ◆ How do you manage cash flow and liabilities? A well-established trust can help your business to maximise gains and effectively distribute losses.
- ◆ How do you distribute costs and profits among unitholders, shareholders or beneficiaries?
- ◆ How will you manage the business, its operations and employees?
- ◆ Does the structure facilitate growth, ease of entry and exit and flexibility for raising finance and capital for further expansion?

Premises and property

When establishing a business, expanding to other premises, growing or adding to your existing space or relocating, you need to consider:

- ◆ **Location:** should you be in the city or away from the city with space to expand? Where are your competitors located? Incubators, habits and shared workspaces.
- ◆ **Agreements:** once familiar with an area, look at what kind of agreement you need.
- ◆ **Lease or buy:** are you going to lease the premises or buy the property and lease it back to your business entity? Or will you look at a serviced office while your business is in its infancy?

We can assist with all of your legal requirements including any purchase documents, leases, licenses, agreements or memos of understanding and, your personal or commercial conveyancing needs.

Employment and industrial relations

As a business owner, you need to ensure that you, your business and its people are protected and can grow. This means having clearly defined roles, expectations and agreements with all of your employees and contractors.

- ◆ Do you have employment or independent contractor agreements which provide sufficient protections and clarity?
- ◆ What policies and procedures should be implemented? Suggestions include:
 - ◆ **Standard:** code of conduct, leave, discrimination and sexual harassment, bullying, IT and security, Workplace Health and Safety, internet & email, social media, performance management and complaints handling;
 - ◆ **Website:** privacy policy and terms and conditions.
- ◆ Are detailed employment records retained? What are your retention policies?
- ◆ Exit and termination procedures, letters and processes
- ◆ Incentive schemes - equity etc.

Estate planning and asset protection

It is important to ensure that your business and family are protected and looked after. Insurance policies, real estate, superannuation and your business may all form part of your estate and need to be carefully considered as part of your estate planning.

- ◆ Do you have a Will drafted by a lawyer? This is the best safeguard to ensure that your individual circumstances are properly considered and your wishes are upheld.
- ◆ Will your estate be administered in a cost and tax effective manner, possibly within a trust structure?
- ◆ Is your estate protected from certain claims or people? What should be in and what should be outside your estate?
- ◆ Will your children be cared for by a person of your choice?
- ◆ Do you have or need binding nominations for your superannuation?
- ◆ Do you have an enduring power of attorney and advanced health directives?
- ◆ Will insurances flow to whom you intend?

If you die without a Will then 'intestate succession laws' dictate which family members will inherit your estate and in what proportion. There can also be substantial costs incurred to administer your estate if you die without a Will.

Intellectual property

Your intellectual property is largely the lifeblood of your business and often sets your brand apart from your competitors. Not protecting your IP leaves your business vulnerable to the name being used or registered by another party.

We can advise what steps should be taken to protect your valuable IP. Generally, these steps are inexpensive, especially compared with the risks of passing off or a dispute.

- ◆ Have you selected and trademarked a name and logo for your business? Trade marking can take time with IP Australia, so it should be prioritised.
- ◆ Have you registered your website domain?
- ◆ IP and software development agreements and ownership.
- ◆ Do you have policies and terms and conditions on your website? Does the information comply with privacy legislation?
- ◆ Who owns and controls your customer data? Is it stored in Australia?
- ◆ Confidentiality so your ideas remain yours

How we can help

- ◆ Establish initial structure
- ◆ Trust and service arrangements
- ◆ Partnerships, shareholder and unitholder agreements
- ◆ Business succession and estate planning
- ◆ Commercial contracting and terms and conditions of trade
- ◆ Share and unit acquisitions and disposals
- ◆ Business acquisitions and disposals
- ◆ Employment and HR matters
- ◆ Privacy, data retention, confidentiality issues
- ◆ Property acquisitions, disposals, leasing and licensing
- ◆ Intellectual property protection
- ◆ Personal estate planning

Please get in touch to arrange an initial discussion. We understand you are busy and can meet outside of business hours wherever suits you best or simply catch up over the phone or virtually.



Zac Herps
Managing Director

