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Part I:

Does the Law Matter?

Learn how you can create value for your business with this overview of the five fundamental legal issues every startup or small business should consider.

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Does the law matter?



Starting a new business is an exciting prospect.

Working for yourself, turning your ideas into reality, and (hopefully) earning sizeable profits has motivated many to take the entrepreneurial route and set out on their own.

In the passionate rush it takes to launch a startup, obvious legal issues can often be overlooked that could derail an otherwise well-thought-out business plan.

Not sure where to start? Here are five fundamental legal issues every startup or small business should consider.

The Five Fundamentals

1. Choose the right business structure
2. Protect yourself and your co-founders with a shareholders' agreement
3. Own all your intellectual property
4. Employ carefully
5. Build the key startup legal documents

Read on.

1: Choose the right form of business



Learn the various business structures and how to make the right choice. When starting a new business, one of the first decisions to make is the type of business organisation that will be used in operating the business.

Although there are a few options to choose from, often the decision is between using a sole proprietorship or limited partnership, where the legal identity of the business and the individual are the same, or setting up a private limited company, which can offer many flexible options in terms of structure ownership, but is a distinct legal entity for liability purposes.

Making the right choice

As a founder, you should consider the needs of your business carefully. Choose the structure that will work for you now, but more importantly, make sure it will work in the years to come. The industry you are entering may itself be an important factor in deciding your business structure, but the right organisation form depends on several other factors, including:

- the cost of formation, which will vary depending on the type of business organisation
- whether the organisation will be responsible for paying profit tax or whether any tax liability will flow through to the owners, such as in a sole proprietorship or a partnership
- the potential liability for things that can go wrong in the business – a sole proprietor and partners in a partnership can face personal liability while

the sole shareholder of a private limited company, under normal circumstances, would not.

Zegal provides a quick service to assist with the incorporation of a company in your jurisdiction, including conducting a company name search to ensure that your chosen company name does not already exist in your jurisdiction.

Zegal can also refer you to our appropriate partners to maintain your company and comply with the ongoing legal requirements.

As with anything in life, choosing a legal structure requires trade-offs. The simpler structures (sole proprietorship or partnership) are cheaper and easier to set up but less flexible in the long term. Incorporating a private limited company is comparatively more complicated and more expensive (however still relatively cheap), but if your startup does turn into the next Instagram, you will be grateful for your foresight.

“The choice of business structure can determine success or failure as it affects many aspects of a business.”

“We wanted to use online documents but we didn’t know if the ones we found were Hong Kong legal or reliable.”

- Timothy Yu, founder



Snapask

2: Shareholders' agreement: necessity, not luxury



Starting a business with close friends or family members may seem to negate the need for formal arrangements. However, individuals can disagree on a broad range of issues even without the set of challenges startups and businesses bring with them. So how do you protect yourself?

A [Shareholders' Agreement](#) (or a [Partnership Agreement](#) in the case of a business organisation set up as a partnership) is a legal contract between all the shareholders. It can flesh out key issues relating to the operation of the business and will formalise your business relationship to prevent any unforeseen issues that will affect the success of your business.

For example, have you considered how the business will continue if one of the founders leaves the company? Would this particular founder retain his shares? If not, does he have a right to offer these shares to the public, or should he offer them to the remaining founders first? How should these shares be valued and paid for?

Dragon Law has assisted numerous startups to create [HYPERLINK](https://dragonlaw.io/legalguide/different-types-of-shareholders-agreements-35/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter) "https://dragonlaw.io/legalguide/different-types-of-shareholders-agreements-35/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter" [Shareholders' Agreement](#) covering the key issues they might face and outlining what should happen in each A> scenario.

While having a [Shareholders' Agreement](#) may seem like you're getting ahead of yourself during the initial startup stage (which may even mean working out of your

home), it's best to get this done before your business grows and things start to become more complicated.

3: Protect your intellectual property



Working hard at a business only for a competitor to steal your product, idea, or brand is a nightmare for any entrepreneur. To avoid this risk, all startups or small businesses should make sure that they own their intellectual property.

Protect your brand name

You may think that registering your company name through incorporation will mean that the name is protected. This isn't the case. A trade mark is the only way that you will be able to prevent another business from infringing on your brand. Using a business name without registering it will give you some rights to that name, but if you want to sue someone for using the same or a similar name, you will only succeed if you can prove that you have built a reputation in the name and suffered actual damage as a result of the other person using it. Proving this can be a very difficult and expensive exercise in court. However, the good news is that these requirements do not have to be fulfilled if you have a trade mark registration. So let's drive this home - although it will cost money and can take time to process, you need to register your brand name as a trade mark if you want to truly own it and be able to protect it. Registering the trade mark isn't where the work ends, you will also need to police the mark.

Before registering your trade mark, you should conduct a trade mark search to make sure that your mark or a similar mark is not already registered in your jurisdiction. In fact before choosing your brand name, you should check that you aren't infringing on someone else's trade mark. The last thing you want as a startup is to be on the receiving end of an infringement action!

To learn more about how to establish, register and maintain your trade mark, check out our other eBook:

[FREE eBook: Own Your Trade Mark](#)

Don't discuss your idea carelessly

Zegal offers a convenient service to assist with your trade mark application, including providing the trade mark search service.

In the excitement of having found a great idea for your business, it's natural to want to share it with family and friends. In fact, many startups have been shaped by the support and invaluable advice of those close to the founders. But be careful! Remember, once an idea is out there, it can't be drawn back in. The idea may be stolen and used by others, and it may even find its way to your competitors. If you are looking for potential business partners or employees, consultants, or interns, and will therefore share your business ideas with them, you should always ask them to sign a [Confidentiality Agreement](#) (also known as a non-disclosure agreement, or NDA), under which they are legally bound not to disclose or discuss your idea or any other confidential information with a third party.

Be sure you own your intellectual property

As a startup or small business, you might engage the services of others to create or develop your ideas. For starters, you might enter into a contract with a graphic designer to design your logo. Or your employee might develop certain software for your online app. Or the head chef at your restaurant might create the perfect recipe for apple pie! Who do you think owns the logo? Who owns the software, and who owns that perfect recipe?



Protecting your intellectual property in each country your product is in is also a vital step in protecting your business.

Arrangements with third parties

If you commission a design agency to design a logo for you, they own the copyright in that logo unless there is an agreement in place stating the contrary. So, if you have a logo that a third party designed for you, you must arrange for the copyright of that logo to be assigned to your business. That way, your business will own the intellectual property rights to the logo and you will be free to do as you please with it. Make sure to add a clause in your [Consultancy Agreement](#) to stipulate that you get full and exclusive rights to the copyright. Similarly, you should make sure that any [Employment Contract](#), and in fact any contract with a third party in which the third party has been commissioned to create something for you, includes an assignment of all proprietary content to your business. This will ensure that any inventions, ideas, products, or services developed by the employee during the term of employment and related to the business belong to your business and not the employee. Don't find yourself in a situation fighting over ownership and creation of any proprietary material.

How to protect your trade mark using Dragon Law

- [Sign up](#) and contact us in the livechat
- We ask you a few questions and guide you through the process. It's easy and takes only a few minutes.
- We liaise with the Trade Marks Registry
- We do the paperwork and manage the application for you.
- You receive registration certificate
- Upon registration of your trade mark, we will deliver the registration certificate to you.

Different types of intellectual property

Trade marks

Words, designs, or phrases that serve as "the brand" for a product or service.

Patents

Ideas or concepts that are novel and non-obvious.

Copyrights

Creative expressions, such as prose, music, or video.

Trade secrets

Zegal helps you **Get Legal Advice** through its network of lawyers across all legal areas and can refer you to experts who can help you protect your patents, copyrights, or trade secrets for a great value fixed price.

Commercial information which is not disclosed to the public.

4: The New Hire: obligations and liabilities



As an employer, you will have many legal obligations towards your employees. Unfortunately, many startups or small businesses overlook these and unnecessarily expose themselves to potential liabilities and penalties. These liabilities may even affect the valuation of the company in a sale or financing transaction.

Here are some of important issues to consider:

The employment contract

The employment relationship should be documented right from the outset. An [Employment Contract](#) sets the obligations and expectations of the company and the employee in order to minimise potential disputes. The document is useful if you want to dissuade certain new hires from leaving your company too soon, disclosing confidential information about your business, or going to work for a competitor.

Regulatory issues

There is a whole raft of legislation that companies have to comply with when employing individuals, including obligations with respect to:

- Employee rights and benefits
- Health and safety of employees
- Complying with various discrimination legislation
- Reporting employee remuneration for tax purposes

Employers need to be aware of their obligations under these regulations.

Mischaracterising employees and consultants

Employee benefits can account for a significant part of their total remuneration package. Because of this, many businesses choose to hire workers with the status of “independent contractors” or “consultants”, rather than “employees”.

This is intended to save costs, since many statutory benefits only apply to individuals who are classified as employees. Consultants or independent contractors do not get these benefits.

However, if a dispute arises, it makes no difference what the parties have chosen to call themselves in a contract. The law looks into the substance of the relationship to determine whether that individual is a true consultant or, in substance, an employee.

A company may face significant liabilities if it is not meeting its obligations as an employer if it is determined that a consultant is in reality an employee. Therefore it is imperative to know the difference!

Common issues that startups usually overlook when hiring a new employee:

- Specifics of any benefits.
- Limitation of entitlements upon termination of employment.
- Limitation on the employee’s ability to compete with the employer’s business once the employee leaves their employment.
- Protection of the employer’s intellectual property, client lists, and other confidential information.
- Ownership of the employee’s work product.

5: Other agreements you may need in the course of your business



Documents play an essential role in protecting the interests of the business and the business owners over the course of a company's lifetime. Here is a list of five common legal documents used by startups and small businesses.

There are a number of documents that your startup may need depending on the type of business and the products or services you offer.

Zegal's Document Builder can help you create these legal agreements at a minimal cost using simple natural-language questions to guide you step-by-step.

Tackling your "legal needs" can seem like a daunting task, but it doesn't have to be.

How documents become legally binding

A signature on a legal document is evidence of one's intention to enter into the terms laid out in the document. In 1998, Singapore became one of the first countries to allow the signing of legal documents online. Hong Kong soon followed. E-signatures hold the same weight and validity as a hard copy signature, but without the paper, transport, and time.

Why use e-signatures?

- Alternative to pen and paper

- Send and sign anywhere in the world
- Legally binding
- Paper-free
- Save time
- Save postage costs
- Added convenience

Zegal's built in e-signature feature gives you and the other signatories to your document the freedom to sign from anywhere, anytime.

- Cloud storage

Common legal documents

Intellectual Property Assignment Agreement

Intellectual property is one of the most important parts of any business, particularly for example for technology startups, where it is vital. You should therefore be careful when entering into any agreement that involves sharing or using intellectual property. The Intellectual Property Assignment Agreement transfers the ownership and rights to specified intellectual property, for example intellectual property created by an employee of a company. Under this agreement, the employee will no longer have any rights in or to the intellectual property assigned.

[HYPERLINK](#)

["https://dragonlaw.io/onepager/confidentiality-agreement/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter"](https://dragonlaw.io/onepager/confidentiality-agreement/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter)Confidentiality Agreement

Your business has information that should remain private, such as customer database, financial information, or new business ideas. A Confidentiality Agreement is your first line of defence to protecting this information. This legal document creates a confidential relationship between your business and any contractors, employees, and other business partners who might get a behind-the-scenes look at your operations.

[HYPERLINK](#)

["https://dragonlaw.io/onepager/term-sheet-\(ordinary-shares\)?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter"](https://dragonlaw.io/onepager/term-sheet-(ordinary-shares)?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter)Term Sheet

If your business is looking for funding, investors will usually ask for a Term Sheet. This is a preliminary document that will include the key terms of an investment in a company, including the agreed-upon valuation of the business, the proposed capitalisation table, the key financial and legal terms, and the rights of the company and the investors.

[HYPERLINK](#)

["https://dragonlaw.io/onepager/website-terms-of-use/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter"](https://dragonlaw.io/onepager/website-terms-of-use/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter)Terms of Use

Certain businesses will require a set of rules that inform people of the conditions that apply to them when they use your services or website. If you don't specify terms and conditions, you put yourself at risk of uncertainty and misunderstandings.

[HYPERLINK](#)

["https://dragonlaw.io/onepager/website-privacy-policy/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter"](https://dragonlaw.io/onepager/website-privacy-policy/?utm_source=offline&utm_medium=ebook&utm_campaign=doesthelawmatter)Privacy Policy

In the course of your business, customers may be required to provide their personal information to you. While the law dictates how this personal information may be used by your company, a privacy policy will inform your customers how this information will be used. # Zegal By leveraging **technology** and working hand in hand with several of the most **reputable local and international law firms**, Zegal provides an **end-to-end solution** to clients' legal needs.

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- Get **legal advice**. Request specialist legal advice and assistance through our network of law firms across Asia.

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- Get **incorporated** in any country.
- Apply for **visas**.

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(no commitment, no credit card details)

The Team 20+ years of experience in leading law firms, tech companies, and consulting firms across Asia, Europe, and the USA.

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