BUSINESS LEGYCLE

How to Successfully Navigate Your Way from Start Up to Success



JEREMY STRETEN

First published by OMNE Publishing in 2016

Copyright © Jeremy Streten 2016

All rights reserved. The moral right of the author has been asserted. No part of this book may be reproduced by any person or entity, including internet search engines or retailers, in any form or by any means, electronic or mechanical, including photocopying (except under the statutory exceptions provisions of the Australian Copyright Act 1968), recording, scanning or by any information storage retrieval system without the prior written permission of the publisher.

National Library of Australia Cataloguing-in-Publication entry Creator: Streten, Jeremy, 1979- author.

Title: The business legal lifecycle: how to successfully navigate your way from start up to success / Jeremy Streten.

ISBN: 9780994551405 (paperback) 9780994551412 (ebk.)

Notes: Includes index.

Subjects: Business enterprises -- Law and legislation -- Australia.

Success in business -- Australia.

Dewey Number: 346.94065

Editing by OMNE Author Solutions
Cover design by Designerbility
Layout by OMNE Author Solutions
Printed by OMNE Publishing www.omne.com.au
ebook by OMNE Author Solutions

This book is available in print and ebook formats.

For Abigail and Benjamin

Disclaimer

- (a) This information was not provided to suit any specific circumstances and is general in nature only. You acknowledge that you must make your own enquiries to determine the validity and appropriateness of the information provided herein.
- (b) This information is not designed to provide, and is not to be substituted for, legal advice and other professional advice.
- (c) Never disregard legal or professional advice, or delay in seeking it, because of the provision of this information. Never rely on any information we provide in place of seeking professional legal advice. You should also ask your lawyer or other professional advisers to assist you in interpreting any information we provide, or in applying the information to your individual circumstances.

Contents

Foreward	7	
Preface	9	
Introduction	•	
Chapter 1	Phase 1 – Conception 15	
1.1	Your Initial Team 16	
1.2	Goals 17	
1.3	Choosing the Right Name 17	
1.4	Conclusion 18	
Chapter 2	Phase 2 – Start-Up 21	
2.1	Structures 22	
2.2	Leasing Premises 31	
2.3	Directors' Responsibilities 36	
2.4	Becoming a Franchisee 38	
2.5	Borrowing Money 39	
2.6	Insurance 46	
2.7	Conclusion 48	
Chapter 3	Phase 3 – Initial Clients 51	
3.1	Who is your Ideal Client? 52	
3.2	Tracking 53	
3.3	Businesses Based on one Client or a Government Body	54
3.4	Where are you Going to get the Clients from? 55	
3.5	Your Initial Agreement/Terms of Trade 55	
3.6	Debt Recovery 57	
3.7	Conclusion 58	
Chapter 4	Phase 4 – Bringing on Employees 61	
4.1	Employee vs Contractor 63	
4.2	The Interview 65	
4.3	The Agreement with your Employee or Contractor 65	
4.4	Liability for Employers 66	
4.5	Workplace Policies 67	
4.6	Conclusion 68	
Chapter 5	Phase 5 – Protecting Intellectual Property 71	
5.1	Trademarks 72	
5.2	Separate Entity to Hold your Intellectual Property 74	
5.3	How-to Guides (including Operating or Process Manuals)	77
5.4	Patents 78	
5.5	Conclusion 78	
Chapter 6	Phase 6 – Maximising your Business/Bringing in Investors	81
6.1	Maximising your Business 83	
6.2	What to Look out for in an Investor 83	
6.3	Shareholders'/Unitholders' Agreements 86	
6.4	Joint Venture Agreements 88	
6.5	Conclusion 89	
Chapter 7	Phase 7 – Expansion/Franchising/Licensing or	
Buying 7.1	g an Existing Business 91 New Business Premises Considerations 93	
7.1 7.2		
1 .Z	i iaiigiiog 34	

7.3	Licensing 96
7.4	Buying an Existing Business 97
7.5	Conclusion 98
Chapter 8	Phase 8 – Estate Planning 101
8.1	Wills 102
8.2	Power of Attorney and Advanced Health Directives 104
8.3	Personal Insurance 105
8.4	Buy/Sell Option Agreements 106
8.5	Conclusion 107
Chapter 9	Phase 9 – Investing in Property 109
9.1	Buying Residential Property 110
9.2	Buying Commercial/Industrial Property 111
9.3	The Process of Buying a Property 112
9.4	Important Factors to Consider when Buying a Property
113	important ractors to consider when buying a rioperty
9.5	What Questions are Important to ask the Real Estate Agent?
9.5 115	What Questions are important to ask the Near Estate Agent?
9.6	Selling Property (be it Residential, Commercial or Industrial)
9.0 116	Selling Property (be it Nesidential, Commercial of Industrial)
9.7	Conclusion 119
Chapter 10	0
10.1	
10.2	Dispute Resolution 124
10.3	• • • • • • • • • • • • • • • • • • •
10.4	Defending Proceedings brought against a Business 127 Conclusion 129
10.5	
Chapter 11	Phase 11 – Sale of Whole or Part of the Business or the
•	g on a Stock Exchange 131
11.1	Taking Cash for Fees 133
11.2	5
11.3	
11.4	Listing a Business on a Stock Exchange 139
11.5	Conclusion 141
Chapter 12	Phase 12 – Retirement 143
12.1	Setting Up for Retirement 144
12.2	Superannuation 145
12.3	Buyout Periods 145
12.4	Conclusion 147
Chapter 13	Phase 13 – Insolvency/Winding up 149
13.1	Insolvency 150
13.2	Winding Up 151
13.3	Bankruptcy 152
13.4	De-registration 154
13.5	Conclusion 154
Conclusion	157

Foreword

I believe entrepreneurs are extraordinary. Starting, scaling, and selling a business is one of the greatest endeavours a person can embark on. This endeavour has the potential for great financial rewards as well as personal growth but it also comes with enormous risks and many pitfalls.

Being an entrepreneur can be a lonely journey with no one to turn to for guidance, support or advice. For many entrepreneurs, they can't talk about their challenges with their employees, their family or their friends because they "just won't understand" or they fear being perceived as arrogant when talking about their business. This leaves many entrepreneurs feeling isolated when trying to figure it out on their own or, worse still, being guided by what they read on the internet or social media. From what I have learnt by helping over 1160 entrepreneurs grow sustainable businesses, this is never more true than when looking at the legal side of growing a business.

One of the blessings of growing a business is that you get multiple opportunities to test and measure, tweak and improve in all areas of business. If you make a mistake, you learn from it and do it better next time. Unfortunately, this does not apply to the laws around growing a business; for the most part, you only get one shot to get it right, so it has to be done right the first time.

Unfortunately, entrepreneurs often seek professional legal advice way too late, often to their personal peril or sometimes to the demise of their business. That's where the Business Legal Lifecycle steps in. It will give you early and accurate knowledge before it's too late.

This practical and easy-to-read book will become your companion guide as you discover the legal obligations and options that await you at each phase. Written with insightful intelligence and full of practical examples and anecdotes, this is a legal and business book that is easy to read and simple to follow. It is a book every entrepreneur should have within arm's reach because it will help you safely navigate the often nerve wracking and treacherous waters of the laws associated with running a business.

Although there are many books on how to grow a successful business (of which I have written one), there are few, if any, that focus on the legal steps associated with starting, scaling and selling a business. This book is the missing and critical piece of the puzzle that aims to support entrepreneurs in any phase of their business development. It is a long overdue and much needed resource to be added to the bookshelves of small to medium business owners everywhere. It gives the reader insight with the ability to predict and prepare for the future. Properly applied, it will allow entrepreneurs to not only grow a sustainable business but to make sure their treasured asset is also well protected.

The Business Legal Lifecycle is laid out like an old 'choose your own adventure'

novel, allowing you to enter at the place that is right for you. It then gives you the options you can take with the pros and cons of each, so you can be well-informed and grow your business with confidence and certainty.

This is a refreshing book not written by some lawyer sitting in their ivory tower pointing their judgmental finger at you like your school teacher did when you didn't do your homework. It's written by someone who not only cares about entrepreneurs but who has walked the path himself. Jeremy started his business from scratch and has grown it into an iconic boutique legal practice. He is also an entrepreneur who has experienced the highs and lows of growing a sustainable enterprise. Unlike many legal texts which are long, boring and full of legalese, this book is written in plain English, making it simple to understand and easy to apply. It is also written with compassion, care and clarity.

In my experience, people want more direction, not more information. While this is an informative book, you will also come away with very clear direction as to what your next business legal steps should be. I expect it will help you navigate safely through your entrepreneurial pathway as you set out to achieve your dreams and desires in business.

Enjoy.

Dr David Dugan

BDSc, Adv Dip Bus, Grad Dip Clin Dent, Dip CH, Dip Fin Planning Author of Bullet Proof Business, Amazon No 1 Best Seller Business Coach & Mentor Founder of ELITE500 Mastermind

Preface

As a lawyer and a business owner I am often frustrated with the legal industry as a whole. All too often, advice from lawyers is boring and repetitive with no thought for the client's actual situation. What happens more often than not is that clients are scared of going to their lawyer, scared of being told that they need to spend tens of thousands of dollars to do everything that they need to do. There is no commercial advice given and legal advice becomes unworkable in the real world. This frustration led to the creation of the Business Legal Lifecycle, a concept to shift legal advice away from the simple 'do everything at once' approach to a more commercial set of instructions for every business owner to use.

This book is all about demystifying the legal processes and unlocking the often confusing world of legal advice for business owners. My aim is to give business owners a reference guide to be able to use in business, to give guidance on legal terms, and to give a clear direction of where a business is and should be going. The 13 phases of the Business Legal Lifecycle have been developed to solve these issues and give business owners a clear path for their business.

As with anything in life, business owners are on a journey of discovery. In writing this book, I have developed a deeper understanding of the Business Legal Lifecycle in general and discovered new and interesting ways to look at businesses. The examples I have given are designed to give that clarity to business owners to be able to identify whether they have encountered a similar problem in the past or as a beacon saying to a business owner that they are not alone and that issues that they face in business are normal. Moreover I want to give you the knowledge and confidence to tackle problems head on and know that other business owners have been there before and there is always light at the end of the tunnel.

In writing this book I have researched other business books and legal processes and have also undertaken an extensive review of the business owners that I have dealt with over the years. I have examined where businesses did things correctly and where they did not, and I have developed the phases of the Business Legal Lifecycle as a guide to where the most successful businesses did things correctly.

Your journey as a business owner will be fraught with danger but it should be a journey that is interesting and allows you to develop many different skills. Whether you are a small, medium or large business owner, you will at some stage of your business life have many different roles, embrace them and learn from your mistakes and also from your successes. This book has been designed for you to establish and build a successful business.

Introduction

Business owners are in business to take control

When you first start out in business, you need to do everything yourself to keep your business going. You need to be the marketer, strategist, salesperson, manager and even the cleaner. Staying in control of all aspects of your business is vitally important to its ongoing success. As your business grows and develops, it is critical that you are aware of the changes and cycles that it will go through. All businesses go through very predictable and repetitive cycles that are both positive and negative. They are all very important and you need to be proactive and ready to take action when the time comes. I have examined not only what successful business owners have done well, but also where business owners have failed, in order to work out what went wrong. This led me to develop the 'Business Legal Lifecycle' based on my experiences as a lawyer working with over 5200 business owners and their businesses.

The main problem that I observe is that many business owners do not know what they need to do with regards to the legal side of their business. They often do not establish the appropriate structure for their business and do not know when certain legal processes of the business should be undertaken. I developed the Business Legal Lifecycle to guide businesses through what legal steps they need to take and when they need to take them.

Experiences

As a young corporate solicitor during the 2000s it was drilled into me that a business should have every single legal document in place before it starts to trade. Part of this is due to the increasingly litigious nature of our society, and part is due to the commercialisation of legal businesses.

Crossing the t's and dotting the i's before you start trading is critical in order to make sure that you are ready for the challenges that you will face as a business owner.

What we see from many business owners

All too often, a business owner, struggling to get their product off the ground, engages with clients and starts employing staff without having the resources or the time to implement all the necessary steps at the beginning of their journey. Setting up your business properly from day one is crucial as the decisions you make at the start will have huge impacts down the track, and could be the difference between success, failure and even bankruptcy.

The Business Legal Lifecycle was developed to help business owners overcome the challenges and protect yourself from the risks that you will face at different stages of your business' development. When your business is about to transition to the next

phase, it is critical for you to understand what your legal options and obligations are so as to ensure that the transition from one stage to the next is successful.

The aim of the Business Legal Lifecycle

The aim of this book is to demystify the legal processes, explain the different legal practices, and demonstrate why they are necessary through the use of real-life examples. I will also attempt to fight my inner lawyer by doing all of this in plain English! The focus of this book is not specific to any particular type of business and can be used by all types of businesses and business owners.

It should be used by entrepreneurs, existing business owners, accountants, lawyers, financial planners, business mentors, business coaches, mortgage brokers, business brokers, real estate agents and other professionals as a guide to the legal aspects of a business.

It may be that some steps occur in a different order or certain events trigger the phases slightly differently, but from my experience, both as a business owner and as a lawyer, successful businesses generally follow a predictable pattern as presented in the Business Legal Lifecycle.

How to use this book

Before we begin, a word of warning: specific businesses and business owners have requirements that are unique to their particular circumstances. This book is a general discussion on the phases of the Business Legal Lifecycle but it should not replace the advice that you, as a business or business owner, receive from your professional team of advisors which is specific to your own particular circumstances.

I have included many different case studies and examples to show how following the phases in the Business Legal Lifecycle can help your business grow into an asset that can either be sold or be used as a lifestyle business (a business set up to fund your ideal lifestyle as opposed to a larger type business). I have not included any names and some of the details have been changed for privacy. The effect of what happened in each case study or example, whether it is positive or negative, is very real. Ideally, you should read this book from cover to cover at least once and I encourage you to flag chapters that are especially relevant to you and scribble notes as you go. You may discover things that you have done correctly (or incorrectly) and, as you reach each transition to a new phase in your business, I encourage you to continually revisit the book to ensure that you follow the correct processes and seek the appropriate advice from your consultants.

What is the Business Legal Lifecycle?

Starting a new business is an exciting venture for any entrepreneur. I know from my personal experience of starting three businesses that sometimes you get swept up in the excitement and resist getting bogged down in important, but let's face it, often boring, legal matters. There is a long list of considerations that a business owner needs to think about when starting a business, with initial start-up costs typically

being the driving factor behind making decisions.

This is one of the reasons that the Business Legal Lifecycle was developed: to ensure that you are aware that you need to start thinking about implementing the different legal processes from the very beginning.

The different phases of the Business Legal Lifecycle are:

- (a) Phase 1 Conception
- (b) Phase 2 Start-Up
- (c) Phase 3 Initial Clients
- (d) Phase 4 Bringing on Employees
- (e) Phase 5 Protecting Intellectual Property
- (f) Phase 6 Maximising your Business/Bringing in Investors
- (g) Phase 7 Expansion/Franchising/Licensing or Buying an Existing Business
- (h) Phase 8 Estate Planning
- (i) Phase 9 Investing in Property
- (j) Phase 10 Litigation and Dispute Resolution
- (k) Phase 11 Sale of Whole or Part of your Business or the Listing on a Stock Exchange
- (I) Phase 12 Retirement
- (m) Phase 13 Insolvency/Winding up

Each phase of the Business Legal Lifecycle will have a different impact on your efficiency and profitability. Consequently, you may decide not to go through a particular phase, or another phase may present itself earlier for you. Your company may enter into litigation much earlier in its lifecycle, or you may decide to invest in property sooner than others typically do. Some business owners decide never to franchise their business.

The phases of the Business Legal Lifecycle were created as a general guide based on our experience in dealing with business owners and the stages we see them experience during the life of their business. Whether you follow the cycle exactly or not, the book is designed to give you an idea of where your business is currently situated and where it is headed.

A word on contracts

Throughout the book I use various terms that refer to a contract, such as: a company constitution, a lease, agreements with your staff and so forth. These are all forms of contracts which are very important legal documents. There is an old saying in the

legal profession, "in any dispute there is your belief as to the truth, there is the other side's view on the truth and then the actual truth is somewhere in the middle." This is especially true if you do not have a contract in writing as each party to the contract will have a different interpretation of the agreement. In the ever-increasingly litigious nature of our society, putting a contract in writing is imperative for any agreement so that all parties can agree upon the terms and conditions.

CHAPTER 5 Phase 5 – Protecting Intellectual Property

'Intellectual property' is the legal term given to the assets of a business that have been created by the business owner, their staff or consultants in the course of their employment and includes trademarks, literary and artistic works, designs, inventions, trade secrets, customer lists, processes, procedures, know-how, partnership agreements, business names and images and so on. It is imperative that you put steps in place to properly protect your intellectual property or you could risk irreparable damage to your business. If, further down the track you decide to sell (see section 11) or franchise (see section 7) your business, your intellectual property is the asset that will form the base of any potential sale or franchise.

This phase is all about identifying, protecting and setting up structures to ensure that third parties cannot steal your intellectual property. While it may seem that this phase should occur much earlier in the Business Legal Lifecycle, the practical reality is that most start-up businesses do not have the resources to take this step until after they have a viable business and start to leverage their employees. It is for that reason that we have included this phase at this stage of the Business Legal Lifecycle.

In this section I will discuss trademarks, establishing a separate entity to own your intellectual property, licensing your intellectual property, how-to guides and checklists for the work done in your business, and patents.

The Protecting Intellectual Property phase follows straight after the Bringing on Employees phase, and is situated on a downward slope of the Business Legal Lifecycle (see image on page 11). As long as the business owner is a sole operator, their intellectual property is safe. Once they engage employees, the need to protect their intellectual property suddenly becomes important. When a business owner first starts out, they will more than likely have all of their ideas and methodology in their head. This intellectual capital is the most important and valuable asset that the business owns.

Once a business brings on employees, the business owner faces the challenge of communicating and explaining their ideas and processes to their employees, usually through documentation and training programs. This information is no longer safe inside the business owner's head, but is shared with others who may, without adequate protection and safeguards in place, use this information for their own benefit rather than for the business.

Important considerations during this phase are:

What is my brand?

- How am I going to protect the brand?
- Is my brand unique enough to protect?
- Will anyone else want to buy my brand?
- How do I protect my intellectual property?
- What other intellectual property do I need to protect?
- If I was to buy my business, what intellectual property would I need to own and what would convince me to pay more for the business?
- How do I teach my staff what I know about my business?

Dangerous considerations during this phase are:

- I do not have time to consider protecting my intellectual property
- Nothing will ever happen to my intellectual property anyway so why bother?
- No one will want my brand
- No one can do what I can do, no matter what systems I put in place

5.1 Trademarks

What is a trademark?

A trademark is essentially your unique name, logo or symbol that the outside world uses to recognise and acknowledge your business or product. Generally speaking, if you have a unique trademark, another person cannot directly or substantially copy that trademark or use it in competition against you. Here, the term 'passing off' applies, as the other business is 'passing off' their business as being the same as or somehow related to or affiliated with your business. If a business is passing off by using a trademark that is similar to yours, for example, you may be able to stop them through the courts. You will need to engage the services of a lawyer experienced in these areas to determine what, if any, rights you have in this regard.

Formal registration in Australia

Most countries have laws that allow for the registration of trademarks with a government body and, in Australia, the relevant body is IP Australia. This registration gives formal recognition to the trademark and grants you certain rights and responsibilities in relation to the trademark to replicate in your business. To protect your trademark in Australia, you need to register your trademark in at least one of the 45 categories or classes of goods and/or services. Depending on your business or product, you may need to protect your trademark in multiple classes as a registered trademark only gives you protection rights for the particular class that you are registered in. A registered trademark will generally grant its owner the exclusive and

protected use of the trademark from the date that the application for registration of the trademark was made with the appropriate government body such as IP Australia. There is a specific process that needs to be followed – which may take more than a year — so you will need the advice of a specialised solicitor.

Once you have submitted your application with IP Australia, your proposed trademark will be examined to determine whether it is unique enough to be considered for registration. Considerations include other similar trademarks (whether registered or not) and the likelihood of confusion between your mark and a mark belonging to another business. In Australia, the trademark will either be approved or you will need to make changes to the mark and/or further submissions as to why your trademark should be approved. Once approved, the trademark must then be advertised to see if any third party has any objections to the trademark being granted to you. Once this process is finalised, you are then granted the registered trademark usually for a period of 10 years.

From the Case Files

We encountered a business owner who did not register their trademark until it was too late. The business was a bakery that had been trading with the same name for 25 years. They had built the business to include 20 stores around the northern suburbs of Brisbane to the Sunshine Coast and they never had an issue with the use of their name. When the business owner decided that he wanted to start franchising the business (discussed in section 7), we discovered that there were a number of other trademarks already registered that competed with his own trademark, and he was unable to use the name of his store/product in the franchise which he could have contested had his trademark been registered. This meant that the business owner had to change the trademark of their business in order to franchise.

International trademarks

If you want to take your business internationally, you will need to first register your trademark in Australia. Once this is done, you can apply to register your trademark globally using the Madrid System through the World Intellectual Property Organisation (WIPO). There are over 90 member countries of WIPO in which protection will be offered to your trademark so long as it does not conflict with another registered trademark in that country. This can be a costly process, as you need to pay application fees to each country. So you need to be clear as to in which countries you intend to trade before you go through this process.

Your protection starts from when you first apply for registration, therefore the earlier that you apply to register a trademark, the better it will be for your business. You will avoid issues that might arise in the future with competing businesses that may mean

that you will need to fight for the registration of your trademark. Worse still, you could build a great, sustainable business that is ready to really leverage, only to find out that you have to change the name of your business and lose the vast majority of the goodwill that you have established over the years of trading.

5.2 Separate Entity to Hold your Intellectual Property

In certain businesses you might require your trademark to be held/owned by a separate entity such as a company or trust or a combination of these and which is different and separate from the entity that operates your business. You would do this so that if something goes wrong with the entity running the business, the intellectual property relating to that business is still protected. In my experience, most business owners, when first setting up their business, do not consider the protection they will need if the business fails and this lack of consideration can end up costing them dearly.

Ideally this step should be taken earlier in the Business Legal Lifecycle, preferably during the Start-Up phase. The financial burden to set up separate entities to own different assets can be prohibitive at that stage, so it has been included as part of the Protecting Intellectual Property phase. You need to be aware that if you need a separate entity to hold your intellectual property and have not done so by this phase, there is little point in doing so down the track as the costs and consequences make it uncommercial.

As always, it is crucial that before you take any step in setting up a separate entity you obtain advice from your lawyer, accountant, business mentor and other consultants to consider how to structure it correctly for your business.

From the Case Files

An example where a client undertook this change occurred recently. The client was a business that provided professional services as a consultant for third party businesses in relation to issues with their employees. The business had been built from the ground up and had established significant intellectual property that whilst not worth much at the time would be worth more in the future. In the early phases of their business, the owners thought that the idea of separate structures to own their intellectual property was cost prohibitive. As they built their business and developed significant intellectual property and even a book, the client had put all of that at risk with it being owned by the vehicle that traded their business. Being a professional services business, even with insurance, the entity that owned the intellectual property was open to attack if someone wanted to allege that their advice was wrong or negligent. We were able to change the structure at a minimal cost for the clients as the intellectual property had not yet reached its full potential value. This meant that we were able to protect the client's intellectual property in a cost effective manner.

Licensing arrangements

Where you set up the separate entity, you also need to consider what arrangements are put in place to license the use of the intellectual property owned by the separate entity to the trading company. Where you have set up a separate entity to hold your intellectual property or have built a strong intellectual property product (and the franchise model is not appropriate for you – see section 7), you should consider what licensing arrangements you need to have in place as without a licence agreement the arrangement might be seen as a sham.

Where a separate entity has been set up for this purpose, it is necessary to have an intellectual property licence agreement between the entity and the business. This is an agreement that covers a variety of different matters, including: payment of licence fees (this can be a great way to distribute profits amongst entities from a tax planning point of view); what happens when the agreement ends (so that if a trading entity fails, the intellectual property is protected); and what happens if there is a dispute with a third party over the intellectual property.

If you decide to license third parties to use your intellectual property, you will have to ensure that you have a variety of clauses additional to those mentioned above. These clauses may include:

- (a) The protection of the intellectual property from misuse by the third party
- (b) Confidentiality in relation to any aspect of the intellectual property
- (c) Ownership over any improvements to the intellectual property generated by the third party

All of these considerations are important but you must ensure that you obtain advice from your lawyer and accountant to ensure that the arrangements that are put in place are correct for your circumstances.

From the Case Files

An example of this type of arrangement comes from a native Australian education company. The company provided educational material to schools and other educational institutions on indigenous Australian culture including teaching methodology and a curriculum on teaching this topic. The client set up one entity to own the intellectual property of the business and another to trade the business. This meant that the intellectual property was protected in the asset holding company and allowed for the payment of royalties from the trading company to the intellectual property holding company. This type of structure is used commonly where you have a high risk business with valuable intellectual property.

5.3 How-to Guides (including Operating or Process Manuals)

As business owners concentrate on building their business, they get so focused on doing the job that they never actually document how to do the job. As a business owner, you may be great at doing the job, but how do you educate your employees, franchisees or people that may buy your business in the future on how to do your job? The best way to compile all of this information is through checklists, how-to guides, and operating and process manuals.

When we started our business we found that we were so busy trying to attract and service clients that we had neither the time nor the motivation to document the processes and procedures on the different aspects of our business. Once we started employing staff to handle files and deal with clients directly, we needed to have processes in place that set out our expectations and requirements as to how staff members were expected to do those jobs correctly to ensure efficiency and consistency of service to our clients.

While it would seem that beginning this process in the Start-Up phase would be a good idea, we found instead that getting the newly-employed staff to draft the manuals, checklists, how-to guides and other manuals was actually a better way. Why? Everyone thinks differently and we all have different ways to process information.

As a business owner, you want your staff to use and re-use these guides. You want the intellectual property for your business to be clear, concise, and easy to use. By explaining and educating your staff on what and how you want things done and get them to draft the guides that they will use themselves, you are ensuring the documentation will be written in a language that is easily understood by the users themselves.

The exact layout of a how-to guide is a decision that you will need to develop in your business with your staff. When we first started, we drafted graphic flow charts that set out all of the steps that had to be taken. However, what we found was that our staff did not like that format and wanted step-by-step guides, like checklists with explanations on what had to occur at each step. If we did not do this, the staff simply would not use the how-to guides and there was no point in developing them.

You do not need a lawyer to help you draft these documents, but you should consult with a business mentor or coach — if you have one — as to the different methods and tools you can utilise to build this intellectual property.

5.4 Patents

A patent is a specific legal right conferred on a business owner to protect an invention that they have developed from misuse by third parties. A patent is granted for any device, substance, method or process that is new, inventive and useful. It grants you, as the owner of the patent, the right to exploit the patented idea for at

least 20 years.

The invention needs to be dissected into its various parts and steps and documented accurately to ensure that the invention is properly protected. Patents are complex to draft and require the advice of specialist patent attorneys who deal only with patents, applications to register patents, and protecting or disputing patents.

If you develop an invention that you believe is unique, inventive and useful, you should seek the advice of a patent attorney to ascertain if the invention is worth protecting before proceeding further.

5.5 Conclusion

As your business grows, you are constantly developing intellectual property. Every business does this, even when they do not know that they are doing it. Your intellectual property may be the key asset of your business, which will become even more apparent if you decide to dispose of the business in the future. It is your unique intellectual property that sets your business apart from your competitors and defines it in the marketplace.

Protecting intellectual property is therefore crucial for any business and, whilst imitation might be the sincerest form of flattery, it is vital that you take the appropriate steps to protect your intellectual property for the future.

By identifying and protecting your intellectual property you are putting the foundations of a successful and profitable business in place. Done properly, it means that your business is ready for the next phase, Maximising your Business/Bringing in Investors.

QUESTIONS TO ASK BEFORE YOU PROGRESS TO THE NEXT PHASE:

- 1. Have you taken the appropriate steps to protect your business' brand?
- 2. Have you registered your trademark?
- 3. Have you protected all of the intellectual property?
- 4. Is your intellectual property now in a position where a third party would want to buy or use it?

Conclusion

In business you are always learning new systems, procedures and methodologies. This book is all about educating you on the different aspects of your business and when legal processes and considerations should be implemented. The main reason that I wrote this book and developed the Business Legal Lifecycle was to share my experience as a business owner and a lawyer. We built our law firm on the principle of 'Solutions for a Better Life' and all of the work we do is geared towards that goal.

Understanding the Business Legal Lifecycle is not the end point for any business owner; it is the beginning of how to operate your business, how to grow your business, and how to prepare for your future. It is critical that you understand the different phases and times when different legal processes should be followed. It is also critical that you have a basic understanding of a number of legal concepts when in business. I hope that you have appreciated the explanations that I have given in this book and that it gives you, as a business owner, a greater understanding of the legal processes involved in operating a business.

I have used many examples and case studies in this book to illustrate how legal processes work and why they are important. You may find these examples similar to your own experiences or you may find that when you are faced with a similar situation, you can identify a potential problem and fix it before it becomes an issue. No two situations are ever exactly the same but you need to know when to take action at the appropriate time. This will prevent you from continually treading water or, worse yet, being swept away when problems occur.

It is important to remember that in business you will face tough times; that is the nature of business and it is entirely normal. It is *how* you deal with those problems that will determine how successful you are in the future. I also encourage you to read all you can and take in as much advice (but not 'barbecue advice'!) as you can in relation to operating your business. Do not implement everything you read and hear; consider your options and, if you are not sure of which way to go, it is probably best to take the course of a trusted advisor. Running a business is a rewarding endeavour and is something that I am very glad I have been able to participate in.

As you will have gathered from this book it is important that throughout the Business Legal Lifecycle you obtain advice from the right consultants at the right time.

Often lawyers or accountants will try to do too much, or they will not allow the other consultants to do their job. I have tried to also point out the various types of consultants that I recommend that business owners engage with at different times in their business.

I wish you the best of luck in your journey in business and through the Business Legal Lifecycle. If you have any questions, then please feel free to email me at lifecycle@jeremystreten.com.

"The Business Legal Lifecycle is one of those books every business owner should own. Written in plain English with practical advice, no matter where you are in your business journey there are gems of wisdom on every page."

Adam Houlahan, Author & International Keynote Speaker

Whether you want to have a large company or a small, lifestyle business; you have to pay attention to the legal aspects – right from the start. If you don't take care of your legal obligations and plan for the inevitable problems that will surface, you will be exposing yourself to strain, stress, loss of business and potentially even bankruptcy.

The Business Legal Lifecycle is designed to guide and empower you with the knowledge you need to successfully navigate your business journey.

In this book you will learn:

- Why and when you need to pay attention to the legal aspects of your business;
- · How to successfully start up your business;
- What you need to put in place to sell the business in the future;
- · Whom you should consult with along your business journey; and
- What you should look at when your business is coming to an end.

Act now and get ready to build a successful business – today!



Jeremy Streten is a successful entrepreneur and lawyer. His passion is to help entrepreneurs and small to medium-sized business owners to succeed in their business so that they can live the life that they want to live. He has

challenged and changed the way that many people look at lawyers. With a personal perspective from acting for thousands of businesses and their owners Jeremy often contradicts conventional wisdom.

www.businesslegallifecycle.com



Business