Legal issues when growing a business

As we head into 2018, many businesses will be looking to drive growth. This seemingly simple goal is not without its challenges. Here we explore three key areas of consideration when looking to grow your business.

1. Terms and conditions: common pitfalls

As your business grows it is essential to keep your eye on the ball - standard terms and conditions should be updated regularly in accordance with legislative change and, even more importantly, must be correctly incorporated as part of your contracts.

Five common dangers found in your standard terms include:

1. Cash flow crisis: More than one in four businesses fail due to cash flow issues – do your standard terms adequately safeguard your position regarding payment and late payment?

2. Risk and ruin: As you store and supply a greater level of stock, the risk of goods being damaged or destroyed on site or in transit increases accordingly – do your standard terms clarify who is responsible for insuring against this risk at every stage?

3. Boom then bust: If one of your major customers becomes insolvent with unpaid invoices, have you successfully retained title to the goods which you supplied, giving you priority over other creditors?

4. Unlimited liability: More sales means more potential claims – do your standard terms seek to limit liability both in respect of the type of loss which the customer can claim for and by establishing a financial cap to your liability?

5. Falling foul of the GDPR: The General Data Protection Regulation introduces potential fines of up to €20m or 4% of annual turnover for data protection breaches – do your terms limit the risk that your business will incur financial and reputational damage in connection with data protection issues?

With the GDPR coming into force in May 2018, now is the best time to have your terms of business spring cleaned.

2. Moving premises

Making the right choices about your premises when expanding your business is critical.

You will have a number of questions about the premises that you will be considering; do you go for a short term quick arrangement for premises with low overheads but little by way of security such as moving into serviced offices? Do you go for a long term commitment to premises that will give you security and perhaps a capital investment - but little by way of short term flexibility by acquiring premises? Or, do you go for something in between by leasing premises?

Once you have decided on the type of premises that is best for your business expansion, you will then need to make sure that the terms of the tenancy or acquisition are as best as they can be.

If you are taking serviced offices, you will want to make sure that the Licence fee is fully inclusive of all running costs such as service charges, rates and utilities. If you are leasing premises you will need to negotiate terms that will ensure you sign up to liabilities commensurate with the interest that you take in the premises. For example, you do not want to become liable for long term capital expenditure on a building when you have a short to medium term Lease. Finally, if you are acquiring premises as part of a long term investment then you should ensure that the right checks are carried out to make sure that the premises will be suitable for your current business needs and future financing or re-sale such as having the correct Planning Permission and Legal Title free from onerous restrictions.

3. The 'once in a lifetime transaction'

We may all think we're good at dealing with the day-to-day issues in our business, but how good are we at the "once-in-a-lifetime" transaction? If we've never done it before how can we be sure to get it right? Recent examples of where that experience has been critical include:

The Buyout: Understanding what level of warranty and indemnity protection our client could expect was critical. Separating IT functions and dealing with personal data in compliance with data protection legislation was critical and a Transitional Services Agreement was needed to allow time for the new business to fully find its feet. It is essential to understand each party's legitimate expectations – and to be able to push back when expectations are not!

The Raising of Expansion Capital: After years of organic growth, taking on a new investor to fund and aggressively drive new growth was daunting for our client. We were able to reduce our client's risk in this case by negotiating a partial realisation of value from the business: this meant that part of the client's shareholding was bought-out and thereby sheltered from future risk.

Acquisition: Opportunities to grow by acquisition occasionally arise. But it is critical to ensure that clients are protected against unknown liabilities and fully secure the benefits potentially available. Obtaining warranties and indemnities on a recent transaction coupled with careful due diligence was a part of the process but we were also able to structure a price adjustment mechanism to help reduce up-front risk.

Disposal: Achieving a "clean break" from liability and maximising the purchase price on a sale are often in conflict; but we successfully negotiated a number of limitations on and exclusions from liability to keep the sellers' liability capped at a sum substantially less than received. We also worked proactively to address and remedy problems which could have had a negative impact had they arisen during the transaction process.

All of these issues and more will be discussed in detail at our Routes to Business Growth Seminar on 26 April at Beales Hotel. To book your place, please contact marketing@taylorwalton.co.uk or visit www.taylorwalton.com.