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# OVERCOMING LEGAL ISSUES

Legal issues and woes often seem daunting for SMEs. At best, it is an unwelcome distraction for business owners; and in the worst case, it can cripple or destroy a company without strong foundations. Two lawyers offer some pointers.

## What are some of the most common problems that SMEs face?

SMEs generally face two types of problems. One, they tend to have inadequate compliance frameworks and two, they may have not sought or received proper legal advice. These two problems are closely interrelated and, as we have often advised our clients, both of them can be easily resolved together.

For instance, many SMEs create their own documents such as conditions of sales or invoice terms by cutting and pasting from various sources such as the Internet or other similar documents. This is an extremely risky penny wise pound foolish approach because in almost all cases that end up in a dispute in court, the source of the dispute originates from either a poorly drafted document or because parties have used a document meant for another purpose.

Another common area of dispute that we frequently encounter is disputes between business founders, directors and/or key stakeholders. This is because many SMEs do not have a proper shareholders' agreement and mistakenly rely on common or industry understanding to regulate even important issues such as decision-making and profit sharing. However, the unfortunate truth is that once relationships are strained, these understandings will immediately be challenged and disputed by all – leading to protracted and complex disputes that will hurt the businesses' ability to perform, lower staff morale and may even cause the entire business to be wound up.

It is therefore critical for SME business owners, partners, directors and/or shareholders to have their rights and obligations properly defined and set out in a legally binding document to prevent misunderstandings and disputes from destroying the hard work that they have put into building the business.

SMEs that start out well-advised and with the proper legal frameworks tend to attract investors, customers and business much better than those that do not, resulting in a virtuous circle of growth. This is because SMEs with all these proper legal structures in place are less likely to encounter disputes that may impact the value of their business; and even if such disputes do occur, they will have dispute resolution mechanisms in the legal framework to mitigate any management deadlock or business stoppage.

As each SME is unique in terms of business model, structure, management aims and risk appetite, proper legal advice can go a long way in helping business owners identify potential pitfalls and avoid unintended adverse consequences.

## SMEs have limited resources and yet it is essential to ensure that adequate legal documentation is put together. What types of agreements should they focus on?

This depends on the type of business that they are in. The key agreements are those that must firstly, support their revenue generation or value creation; and secondly, agreements that govern the rights and obligations of key stakeholders. If the SME is a service provider, then their terms of engagement, work scope etc with customers

must be clearly defined. If they are B2B manufacturers/suppliers, then they will need a robust manufacturing or supply agreement, especially to clarify the allocation of risk and roles and responsibilities. If the businesses' value comes from intellectual property, then they really need to have a strong licensing agreement. Underpinning all this, the business owners need to have a clear framework governing themselves, and employment agreements governing their key employees.

## Of late, there has been a proliferation of websites offering to draw up/generate standard form contracts for a fee. Are these online services viable options for SMEs?

SMEs need to first understand that these online services are not recognised, registered or regulated as law firms by the Law Society of Singapore and thus, are not authorised or permitted to provide any legal advice. In addition, these websites and their owners do not have any professional indemnity insurance. What this means is that in the event that there is a dispute with the website or the document fails to protect the SME's interest or worse still, cause a business stoppage, the SME has no recourse. In addition, many of these sites offer templates and documents that are designed for different legal jurisdictions or processes (such as fund raising) and may not be applicable or enforceable if used in a Singapore context.

## What are some of the critical clauses in contracts to watch out for?

Clauses which define work scope and deliverables, payment terms, termination clauses, dispute resolution processes and jurisdiction clauses are some of the provisions that one will have to pay particular attention to. In particular, SMEs should look out for one-sided clauses. A common example would be indemnity clauses – these clauses may require one party to indemnify the other for something wrong that they did, but may not apply in the reverse.

## Disputes can be expensive to resolve – are there self-help remedies for SMEs?

Yes, parties with disputes under S\$10,000 should proceed to the Small Claims Tribunal – do note however, that not all cases are heard by the Tribunal, for

example motor accident cases.

For SMEs who have simple claims – such as for instance, default on payment for goods sold and delivered – they should approach a lawyer to file a lawsuit under the new Simplified Process for claims under S\$60,000 in the State Courts. The Simplified Process is streamlined and relies primarily on mediation as a dispute resolution technique, rather than on adversarial proceedings which increases the number of Court processes and therefore, legal costs.

Cases brought under the Simplified Process go before specially trained judges who will focus on quickly narrowing the issues in contention, encouraging both sides to cooperate and/or helping parties to negotiate issues to resolve the dispute. This judge-led approach facilitates settlements faster than under an adversarial approach and therefore results in lower legal costs for all parties. Parties whose disputes are in excess of S\$60,000 but under S\$250,000 may also apply for their matter to be resolved under the Simplified Process.

## What is the best way to prevent disputes from happening; and if they occur, how to best manage them?

SMEs should always strive to have clear documentation when dealing with and negotiating with counter-parties and even internally (such as between partners and business owners) to set clear expectations; and to maintain channels of open communication. This helps to prevent misunderstandings and misalignment of expectations.

It is also advisable to include a mandatory negotiation/mediation clause for contracts. This would mean that in event of a dispute, parties will need to first negotiate with each other and/or proceed to mediation to try to resolve the dispute first instead of resorting to a lawsuit at the onset. This prevents an unnecessary escalation of costs and avoids a situation where one party with deeper pockets uses the lawsuit to apply pressure on the other.

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