

10 Important Things Successful Businessmen Should Know

Great products and superior services are not enough to guarantee success in today's market. This article provides some important issues business owners should consider in operating their businesses.

1. **Plan for the Future.** Every company must develop a strategic plan for its growth and development. This plan should be presented and explained to its management and to its employees. The business plan needs to lay out, in a step-by-step format, how the company will navigate future challenges. A business owner must listen carefully to, and incorporate comments and advice from, its employees, management and customers in creating and implementing such a business plan. Employees must then receive periodic updates on the company's progress in meeting targets and goals under the business plan, and feedback on their individual performance.

A business owner's positive, pro-active approach to running a business and implementing a business plan is important to the future prosperity of his company.

2. **Company Structure.** The way your company is structured – as a C corporation vs. an S corporation – can make an enormous difference when it comes to conducting your business.

One basic difference between the two types of entities is that C corporations are taxed at both the corporate level and the shareholder level.

S corporations, on the other hand, are "flow-through" entities for tax purposes. There is no corporate-level S corporation tax; whatever the corporation earns is taxed entirely to the shareholders. This distinction can save some S corporations thousands of dollars in taxes.

3. **Organizational Documents** Each company must have organizational documents prepared, and periodically revised, by an experienced corporate attorney.

For corporations these organizational documents include Articles of Incorporation, By-laws, consents, stock certificates, and a Shareholders Agreement.

A correctly prepared Shareholders Agreement can help avoid or minimize disputes and costly lawsuits between business owners.

4. **Commercial Lease.** Many companies rent commercial space to operate their businesses and as tenants enter into leases, with minimal or no changes. A lease is an agreement, where the landlord agrees to make certain space available to the tenant, and in return, the tenant agrees to pay rent (and sometimes its share of taxes and expenses) to the landlord. Most leases contain complicated terms, such as rent abatement, insurance, late payment, right to reentry and others.

Further, with the possibility of unanticipated changes in business, tenants should seek the right to either assign the lease or sublet all or a portion of the premises to a third party.

During lease negotiations, much attention focuses on the security deposit. Often, the security deposit is in the form of cash and is equal to one or more month's rent. However, a letter of credit is an alternative form of security that is attractive to both parties. The tenant is able to avoid tying up cash it may need for business operations or working capital, while the landlord can convert the letter of credit to cash and all or a portion of the proceeds may not be subject to the automatic stay order if the tenant files for bankruptcy.

Signage and visibility are often critical for the success of a retail or ground floor tenant's business, and should be specifically addressed in the lease.

A business owner should consult an experienced real estate attorney before entering into a new lease or a lease extension, to avoid unreasonable lease conditions and to limit the company's exposure to risk.

5. **Intellectual Property.** A company needs to be proactive and protect its products and services as Intellectual Property (IP) -- another competitive tool in the marketplace -- or its competitors will use their IP against them.

Developing a patent portfolio is important for any company, not just "high tech" companies. A company should consider not just patenting its "nuts-and-bolts" technology in the United States and abroad, but all of its business and marketing systems for products and services, including its accounting and billing systems, ordering and shipping processes, marketing systems, and production and manufacturing systems. If you're not doing it, your competitors are.

A company's trademarks and copyrights also have an important role to play in protecting brands and corporate identity, both in the United States and abroad. International protection is becoming easier and less expensive to obtain in many more countries.

The strategic IP portfolio is invaluable as a source of revenue and can often be the most valuable corporate asset. If company growth opportunities are limited, licensing-out IP should be considered for a discontinued product, for additional manufacturing capability, or to enter markets that are not currently being served. Licensing revenue can be significant to any company, regardless of size and can provide a growth platform. A solidly protected IP portfolio can provide the basis for litigation revenue from an infringing competitor. IP judgments can be in the thousands to hundreds of millions of dollars.

In sum, vigilant protection and creative exploitation of IP assets can make tremendous financial contributions to your company.

6. **Agreements with Employees and Consultants.** To promote stability and continuity of its business, a company should have employment agreements with its key employees. These employment agreements must outline the compensation, benefits, duties, term and termination and restrictions in the employment relationship. A consulting agreement will typically have similar provisions, but must make it clear that the consultant is an independent contractor, not an employee, and will be responsible for payment of all federal and state taxes.

Because a company has to protect its intellectual property, as described in Section 5 above, the company should have confidentiality, non-competition and non-solicitation agreements with its employees, consultants and contractors. These agreements restrict the disclosure of confidential information, protect the customer relationships and prevent the solicitation of your company's employees.

7. **Family Business Planning.** Running a successful family business is a delicate balancing act -- mixing family and business relationships, determining fair compensation for family and non-family employees, grooming the next generation for leadership. By definition, a business doesn't become a family business until the second generation gets involved. Your company's future depends greatly on how well you prepare your children for the possibility of working in the family business. Joining the business should be seen as a choice and a privilege to be earned, not as an obligation or an entitlement. Young family members should absolutely be involved in the business through summer work and part-time work. This gives them a chance to be exposed to the business and test whether they have an interest in it, and to enjoy their family's heritage. But before younger family members make it a career move, the governing owner of the family business should establish rules and policies for qualifications of family members how much education, how much outside work experience, etc.

The governing owner of a family business must also take the time to create a succession and estate plan.

8. **Estate Planning.** An estate plan is simply the legal and financial arrangements that you make for the management and distribution of your property after your death, including such documents as a will and personal trust. Unless you have an estate plan, you could leave your family with legal problems and tax burdens – instead of the valuable assets you intended for them.

Your estate may very well be larger than you realize, so it could be more vulnerable to estate taxes than you think. All of your property is part of your estate: investments, benefit plans, stock options, homes, cars, boats, insurance – in short, everything. Remember: *If you own it, it can be taxed.*

If you don't have an estate plan, much or all of your property could go to people other than those you (or even your survivors) want to benefit. The value of your estate could be dramatically reduced by unnecessary taxes and legal fees, and your survivors might have to struggle for months to untangle the bureaucratic and legal problems that you leave behind.

Unfortunately, accidents and illness can claim the lives of even young, seemingly healthy people, so estate planning is not something you can put off. An estate plan is a most thoughtful gift to give to your survivors, ensuring that they are secure – financially and otherwise – in your absence. A well-conceived estate plan can provide for your family, distribute property quickly, minimize taxes and costs, protect your family's privacy and provide creditor protection.

9. **Third-Party Agreements.** By putting its agreements in writing with suppliers, distributors, manufacturers and other third parties, your company can ensure a steady and stable supply of goods and services. The terms and conditions of your supply agreements and/or distribution agreements should reduce the risk of unpredictability and provide your business with continuity in its business relationships with customers. Your company's invoices and purchase orders must also be in writing to avoid disputes with your customers and suppliers and to provide your business with the ability to disclaim certain liabilities.

A company that purchases its products from, or sells its products to foreign countries, must also comply with complex import or export restrictions and other domestic and foreign regulations.

10. **Financing.** In order to conduct its business, companies often seek capital from banks, commercial finance companies and other financial services companies. Companies often find themselves embroiled in loan transactions, recapitalizations, credit enhancements and other types of financing transactions, which involve complicated security, collateral, and default provisions and restrictive covenants. The officers and owners of a company must not enter into any of the foregoing financing transactions, until the operative financing documents have been reviewed and negotiated by an experienced attorney.

If you have any questions regarding the issues discussed in this article, please call Serge Biberman, 24 hours a day, at the telephone number 312.410.7863.