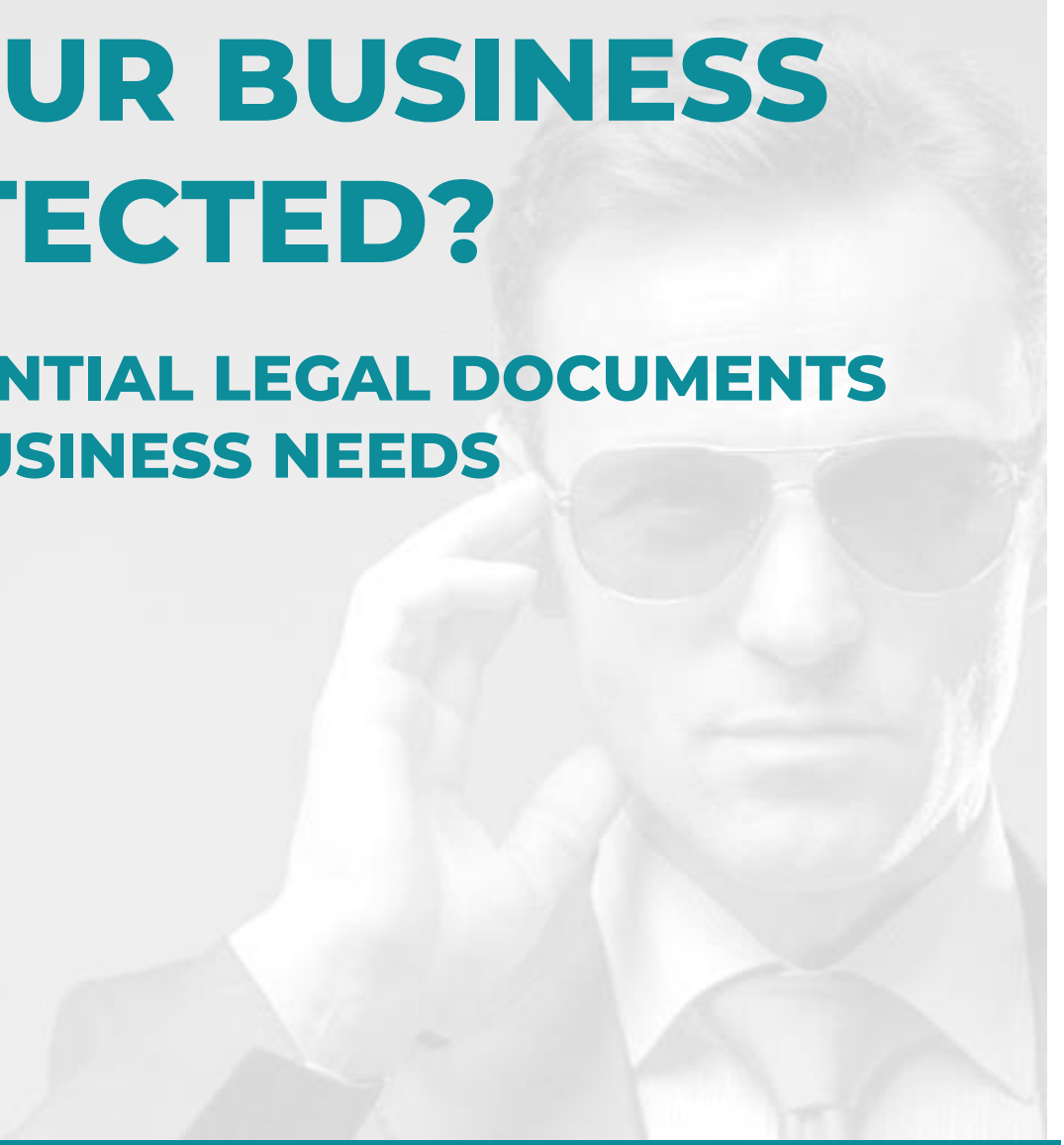
LEGAL POINT
LAWYERS & ATTORNEYS

IS YOUR BUSINESS PROTECTED?

THE ESSENTIAL LEGAL DOCUMENTS EVERY BUSINESS NEEDS



Legal Point Lawyers & Attorneys

Business Legal Essentials

Liability limited by a scheme approved under Professional Standards Legislation. Legal practitioners employed by Legal Point Pty Limited are members of the scheme.

THE LAW SOCIETY OF NSW
PROFESSIONAL STANDARDS SCHEME

TABLE OF CONTENTS

ARE YOUR LEGAL DOCUMENTS OUT-OF-DATE? 3

SHAREHOLDERS' AGREEMENT 4

LEGAL HOUSEKEEPING: COMPANY SECRETARIAL 5

EMPLOYEE HANDBOOK & EMPLOYMENT CONTRACT 6

THE IMPORTANCE OF CONFIDENTIALITY 7

WEBSITE TERMS OF USE 8

MORE INFORMATION 9

ARE YOUR LEGAL DOCUMENTS OUT-OF-DATE?

AS YOUR BUSINESS CHANGES, SO SHOULD YOUR LEGAL DOCUMENTS

The law changes. Best-practice changes. The economy changes. Your business changes, and your personal circumstances change. Your legal setup needs to be reviewed regularly to ensure that it keeps up.

In the rush to get their businesses up-and-running, many people overlook putting in place the essential legal documents addressed in this guide. Do you have all of these documents in place?

If so, are you sure that they're still up-to-date?

As your legal documents age, they might not be protecting you the way they once did. For this reason, every business should regularly check and update its legal documents to ensure compliance with new laws, and protection against new threats, as the business grows.

This guide takes you through the key legal documents that every business needs and shows you why you should consider reviewing and refreshing them.

SHAREHOLDERS' AGREEMENT

KEY QUESTIONS

- Who are the equity stakeholders?
- What are their voting rights?
- Who gets to appoint a director?
- How will important business decisions be approved?
- What restrictions should apply to selling shares and raising more equity capital?
- How will disputes be resolved?

THE MOST IMPORTANT CONTRACT YOU'LL EVER SIGN

As soon as your business has more than one owner, you need one of these, and this may turn out to be the most important contract you ever enter into. A proper Shareholders' Agreement will govern how important business decisions are made, how the company will raise further capital in the future and how the investors will ultimately exit – all crucial matters about which there should be clear agreement in advance.

Of particular importance will be pre-emption rights on new issues of securities, which help to prevent the investors from being diluted by future capital raisings, as well as pre-emption rights on transfers of securities to give the investors certainty about the particular individuals with whom they are going into business. Tag-along and drag-along rights can also prove to be crucial when one or more of the owners are seeking to exit the business.

"A proper Shareholders' Agreement will govern how important business decisions are made, how the company will raise further capital in the future and how the investors will ultimately exit – all crucial matters about which there should be clear agreement in advance.

Creating a shareholders' agreement for your business will force you and your co-investors to sit down together and address these vital points upfront.

When the time comes sell your business or raise further funding, potential purchasers and investors will undertake due diligence and ask to inspect the books of the company. Presenting them with a company register that is a shambles is not a good look, so doing your legal housekeeping now will prove to be worthwhile.

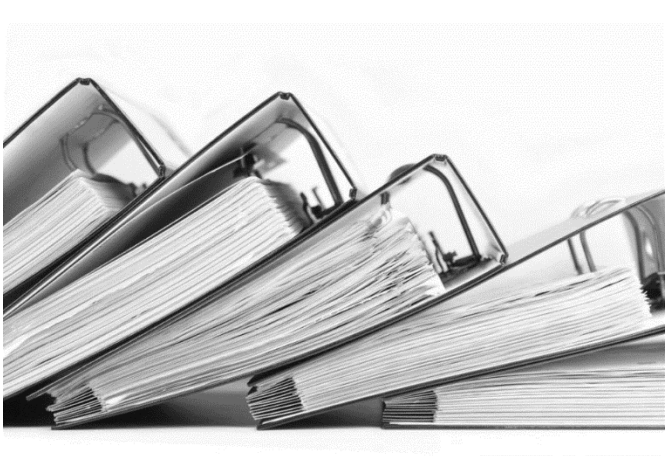
LEGAL HOUSEKEEPING: COMPANY SECRETARIAL

Nobody likes paperwork, but certain legal record-keeping requirements are mandated for all companies by the *Corporations Act 2001* (Cth). Failure to comply with these requirements can lead to ASIC (Australian Securities and Investments Commission) fines, as well as potential disputes amongst the investors.

All too often, businesses are not aware of these legal obligations and the company's fundamental documents are thrown together with little thought, if any. This may cause serious issues down the track.

Important company secretarial documents include:

- register of members (ie, shareholders) and optionholders;
- share certificates evidencing the shareholdings;
- application forms when investors subscribe for shares;
- transfer forms when shares are bought and sold;
- board resolutions approving all issues and transfer of shares and other key decisions of the company (eg, entering into major contracts, paying dividends, etc);
- consents to act as directors;
- company constitution; and
- power of attorney authorising key executives to sign documents on behalf of the company.



KEY QUESTIONS

- Who are the directors and have they been properly appointed?
- Do all investors have proper evidence of their shareholdings?
- Are the company's registers accurate?
- Are all ASIC filings up-to-date?
- Are all of the company's records in order?

EMPLOYEE HANDBOOK

Every business needs a comprehensive set of employee policies and procedures. These work hand-in-hand with your employment contracts to define the company culture, set expectations and clarify the rules for all employees.

Adopting a proper Employee Handbook will help you to meet your legal obligations, enable managers to make reliable decisions and promote a culture of fairness. This can avoid disputes and grievances caused by confusion and inconsistencies and raises the level of professionalism of your business.

Your Employee Handbook needs to be customised to suit the particular environments in which your staff will be working and the tasks they will be performing (eg, food safety, manual handling, working outside, dress code, code of conduct, etc).

EMPLOYMENT CONTRACT

Hiring, incentivising and managing employees is often the biggest challenge faced in running a business. Choosing the right individuals to employ is, of course, most important, but all too often businesses bring in employees without putting a proper employment contract in place. That can lead to big problems for the business down the track.

In particular, it is absolutely vital that employees within the business are not able to lay claim personally to any of the company's valuable intellectual property. Confidentiality provisions will also be extremely important, as you will be exposing the inner workings of your business to your employees.

Also consider putting in place reasonable non-solicitation and non-compete provisions for staff who will have access to the company's proprietary know-how and key suppliers/customers.

Navigating through the minefield that is Australian employment law is a daunting task for any business. A proper employment contract should be viewed as essential for every employee.

THE IMPORTANCE OF CONFIDENTIALITY

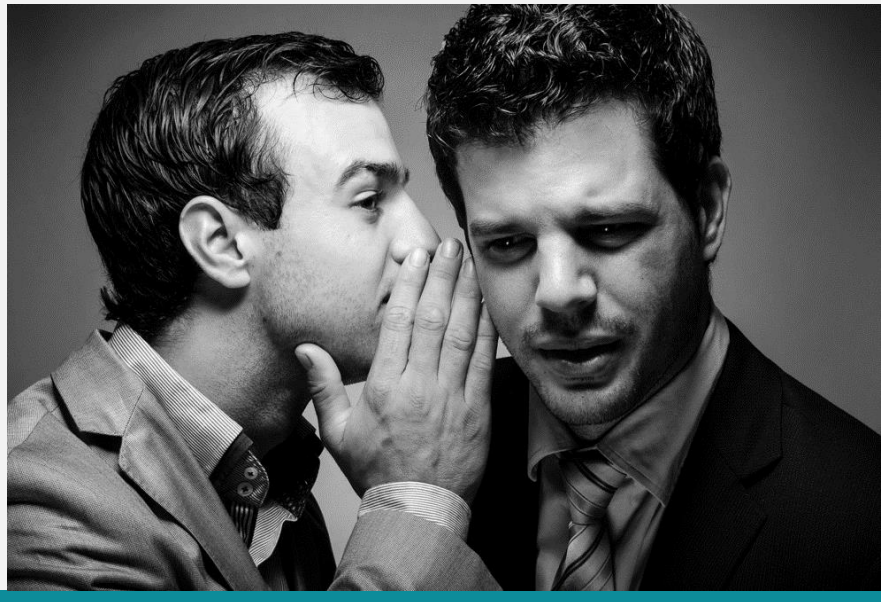
You may be able to pique the interest of customers, suppliers, investors and partners without giving away too much of your business's confidential information, but their questions will inevitably become more probing and, sooner or later, you will need to delve into details that are sensitive to your business.

As the saying goes, "I'd rather shake hands with an honest person than sign a contract with a crook". Trust is important in every relationship, including business relationships, but prudent business practice means putting in place the customary legal protections of a properly drafted confidentiality agreement (otherwise referred to as a "non-disclosure agreement" or "NDA") before disclosing your business's valuable confidential information.

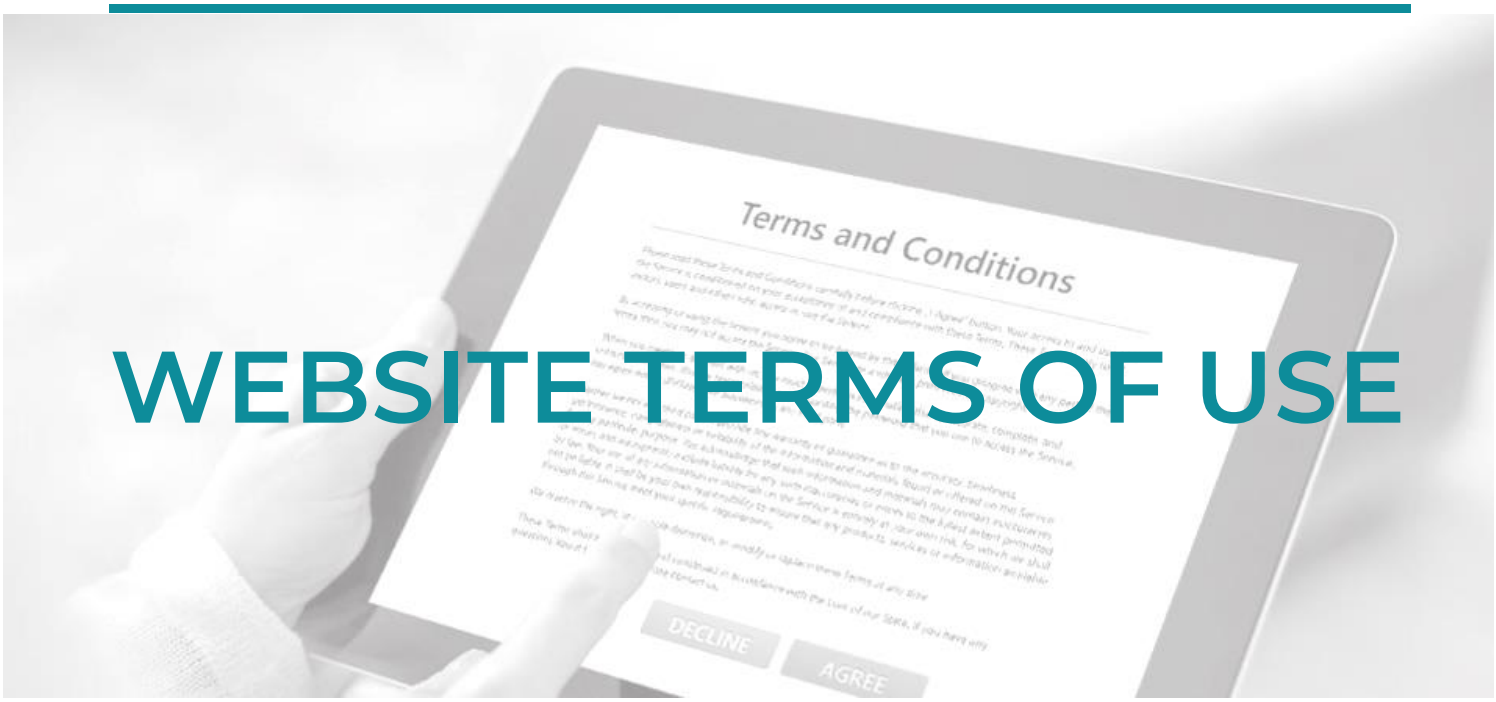
Requiring a confidentiality agreement before engaging in confidential discussions will not only help to protect you legally but will also help you to present as a prudent and professional businessperson to potential suppliers, investors, partners and customers.

KEY QUESTIONS

- What information is sensitive to the business?
- To whom will that information need to be disclosed?
- How will the confidentiality of that valuable information be protected?



"As the saying goes, "I'd rather shake hands with an honest person than sign a contract with a crook" ... but prudent business practice means putting in place the customary legal protections of a properly drafted confidentiality agreement.



WEBSITE TERMS OF USE

Nowadays, every business needs a website, which means that every business needs a set of Website Terms of Use. Website usage terms lay down the rules for people using your website, including what conduct is prohibited. Importantly, they also include disclaimers and limitations of liability to protect you in case things go wrong.

Your website usage terms need to be customised to suit your business and the particular ways in which your website will be used. For example, if you sell products through your website, you will need provisions regarding pricing, payments, delivery and returns, refunds, etc. It is advisable to include a separate returns policy if you are selling physical goods.

PRIVACY POLICY

Although small businesses (ie, with turnover less than $3 million) are not mandated to include a Privacy Policy under the *Privacy Act 1988* (Cth), it is customary for all websites to include a Privacy Policy where personal information (eg, name, address, date of birth, credit card details, etc) may be provided by website users. Customers expect to see this when transacting online, so we suggest including a formal Privacy Policy alongside your Website Terms of Use.

The General Data Protection Regulation ("GDPR") of the European Union may also apply to Australian businesses and has harsh penalties for non-compliance.

KEY QUESTIONS

- Does the website sell anything? If so, does it sell products and/or services?
- If products, are they physical goods needing postage, or digital goods (eg, mp3s, videos, etc)?
- Does the website contain user-generated content (eg, comments, forum posts, etc)?

MORE INFORMATION

OUR ONLINE SERVICES

The Documents mentioned in this Guide are available through our Online Services. For more information, please visit: https://legalpointlawyers.com.au/service/online-services/

CONTACTS

Mr Ge Wu
Principal Solicitor| Notary Public | Registered Migration Agent (MARN: 0601825)

Mobile: 0433 539 869
Email: ge.wu@legalpointlawyers.com.au
WeChat: LegalPointLawyers888

Or scan the QR code below:

This guide should not be relied on as a substitute for obtaining legal, financial or other professional advice. It is intended to provide general information only and is not intended to be comprehensive. The contents do not constitute legal, financial or taxation advice and must not be relied upon as such. You must seek specific professional advice tailored to your personal circumstances before taking any action based on this publication.

Should you require legal advice, please contact us.

Legal Point Lawyers & Attorneys (ABN 48 130 196 940)

Office：Suite 804, 265 Castlereagh Street, Sydney NSW 2000
Mail：PO Box 20369, World Square NSW 2002
Phone：1300 618 888
Fax：02 9283 1588
Email：info@legalpointlawyers.com.au
Web：www.legalpointlawyers.com.au

LEGAL POINT

LAWYERS & ATTORNEYS