

Evolving needs for emerging and high growth companies

Commercial, compliance and other strategic legal considerations

Introduction

As your company grows and evolves, so will your commercial, compliance and other strategic priorities. This resource assists with identifying commercial and compliance considerations that companies should keep in mind at various stages of development. Below we have allocated activities to particular stages of development based on financing round. That said, at a given time each company's priorities will be unique and will be informed by a number of factors, including industry, business model and financial resources. If and when you are ready, Osler would be pleased to assist with developing and actioning a strategic plan to meet your company's legal needs.

Seed-stage companies

Companies at this stage of development should:

- **Put in place essential, customer-facing agreement templates:** Basic agreements, such as website terms of use, non-disclosure agreements, pilot agreements and customer agreements streamline sales and drive revenue while managing risk.
- **Be aware of Québec-specific business considerations:** If you are doing business in Québec, you should understand and appropriately address province-specific legal considerations, such as contracting differences, consumer protection, French language requirements, privacy law requirements, and unique employment considerations.
- **Ensure collaborative arrangements are contractually documented:** Collaboration and partnership arrangements should be contractually agreed to in order to clearly define responsibilities, revenue shares and intellectual property rights, and to mitigate potential disputes.
- **Implement a security compliance program:** Becoming familiar with industry accepted security standards, developing a security compliance program and working with security auditors early is a key step for emerging companies. Proactively addressing these points helps mitigate potential security risks, builds credibility and trust in the marketplace, and can make contracting with potential customers more successful and efficient.
- **Consider privacy obligations early:** Understanding and strategically addressing privacy and anti-spam-related risks is an important step from compliance, brand trust and investor-readiness perspectives. Conduct an initial review of business practices and put in place a basic privacy policy, obtain any necessary consents to process personal information and send electronic messages, implement a privacy compliance program and have appropriate privacy terms in your commercial agreements.
- **Evaluate and document data collection and use processes:** Data collection and use by companies (including to train models) raise a number of contractual, regulatory, intellectual property and other legal considerations. It is critical you understand how your company collects and needs to use data. Building these considerations into your business early can mitigate or avoid issues at later stages.

- **Understand your industry's regulatory landscape:** Many companies will be subject to industry or subject-matter specific regulations, including businesses with operations that involve financial services, consumers, health, franchising or exports (among others). It is advisable to investigate and identify compliance obligations early.
- **Ensure appropriate agreements are in place with employees and contractors, and evaluate other HR risk management needs:** For compliance, operations and investor-readiness purposes, ensure you have basic jurisdiction-appropriate template employment and contractor agreements, sales commission and bonus plans (if applicable) and basic, statutorily required workplace policies (such as health and safety and workplace violence and harassment policies).
- **Evaluate intellectual property (IP)-related risks and priorities.** Identifying IP-related risks and priorities early is important, particularly if IP is your company's principal asset or if you are otherwise aware of situations that may lead to claims of IP infringement from competitors (in which case, a defensive IP strategy may be required). It is critical to review current and past practices to ensure that all IP is assigned to and vested in the business. You may also wish to explore whether you qualify for provincial or federal government programs that offer intellectual property-related funding.
- **For more information, see:**
[Video - Evolving needs for Emerging and High Growth Companies: Seed Stage](#)

Series A companies

Companies at this stage of development should:

- **Develop sophisticated sales channel arrangements:** As your company grows and your sales channels diversify, put in place template agreements for common indirect sales arrangements, such as reseller, referral and distribution arrangements. These agreements are often part of successful scaling.
- **Identify high-friction points in customer agreements and develop processes for evaluating customer forms of agreements:** Growing companies often work with counsel to refine their customer agreement templates to minimize negotiation friction learned from experience. Similarly, developing processes for evaluating a customer's form of agreement and tailoring agreements to the needs of customers in regulated industries (such as government, health or financial services) can help ensure efficient and informed negotiations.
- **Evaluate collaborative arrangements:** Evaluate existing collaboration and partnership agreements to ensure that contractual arrangements accurately reflect commercial discussions and protect your intellectual property rights. Ensure that processes are in place to ensure that all new or renewing collaboration and partnership contracts are reviewed and negotiated.
- **Ensure a robust, enterprise-wide privacy and information-governance compliance program is in place:** Your privacy compliance program should grow alongside your organization. Implement internal privacy policies and procedures to help ensure compliance with applicable laws (including by addressing cross-border privacy issues, vendor management, data subject rights and data retention) and foster public and business partner trust. Note, your privacy compliance obligations will vary widely depending on the nature of personal information that your company processes.
- **Develop data-use and model development policies and contractual terms for various types of model training and tuning (if applicable):** The law around data is rapidly evolving, and it is crucial to understand your developing legal responsibilities regarding data use and collection. Creating, formalizing, and training staff on data policies is essential to manage and reduce data-related risks as your company grows.
- **Level up HR-related policies and processes:** Implement statutorily required and recommended workplace policies (e.g. technology use, health and safety (if not already in place), remote work, pregnancy and parental leave, vacation, sick leave, accessibility (Ontario and Manitoba), electronic monitoring (Ontario), disconnecting from work (Ontario), workplace violence and harassment (if not already in place)) to meet legislative requirements and ensure appropriate risk management within a growing workforce. As your company grows, you should also put in place workplace training requirements, employee incentive

compensation plans (if not already in place), separation package templates and a typical employee exit “playbook” and offboarding process. Conducting an overtime risk assessment and strategy and putting in place a joint health and safety committee (where applicable) can also help improve operations and manage risks effectively. Revisit your standard employment and contractor agreements to ensure they are still up-to-date and in line with the current jurisprudence and legislation, and that they contain the appropriate and requisite terms and conditions based on the size, nature and stage of the business. You should also revisit the classification of employees vs. independent contractors within your workforce to mitigate material misclassification risk.

- **Develop a compliance strategy for industry-specific regulations and risks:** Undertaking risk assessments for compliance issues specific to your industry or customer base and developing compliance strategies is an important consideration for an expanding organization, particularly one operating in a highly regulated industry. It is also important to develop processes in order to keep current with and respond to changes to the regulatory landscape.
- **Review and refine your insurance program:** From a risk management perspective, it is important to review and refine your insurance program to ensure key risks (e.g. cyber-risk) and client requirements are appropriately addressed.
- **Evaluate CFO needs:** CFO services (part time or full time) are valuable for addressing needs relating to financial modelling, due diligence, bookkeeping, payroll processing, investor reporting, sales enablement and data analysis.
- **Develop a sophisticated IP strategy:** To protect your business and maintain a competitive edge, obtain an IP market intelligence and patent landscape analysis and building out your IP strategy. This may involve identifying and securing key patents, monitoring competitor activities, and leveraging market intelligence to align patent filings with emerging industry trends and technological advancements.
- **For more information, see:** [Video – Evolving needs for Emerging and High Growth Companies: Series A](#)

Series B companies

Companies at this stage of development should:

- **Implement processes to effectively scale sales:** As businesses scale, many establish dedicated commercial teams to handle sales contract negotiations. To efficiently address common issues and maintain consistency across customer agreements, many commercial legal teams dedicate resources to developing contract negotiation playbooks. Additionally, as your customer base grows, you should ensure that your business has strong processes in place to document, communicate and monitor compliance with bespoke negotiated customer requirements.
- **Develop complex business critical agreements and workplace procedures:** Expanding organizations should evaluate, leverage and strategically negotiate complex business critical negotiations, such as major collaborations or partnership agreements, high value and long-term customer agreements or executive agreements. Executive-specific employment agreement templates, advanced talent-recruitment and retention strategies, and employee handbooks can also assist with effectively scaling your workforce.
- **Strategically approach expansion to U.S. and international markets:** Proactively address legal issues as your organization’s customer base expands across borders. This may involve revisiting your commercial agreements and business practices to ensure they are compliant and align with local practice.
- **Monitor, update and refine compliance programs on a regular basis:** By now, you should have robust compliance programs relating to privacy, anti-spam, security incidents, data use, overtime, pay equity, vendor management and other regulatory requirements. You should also have related employee training and awareness programs in place. Implement comprehensive safety strategies and standard operating procedures related to the nature of your business. If you have not done so already, an individual should be designated as responsible for privacy compliance (e.g. a Chief Privacy Officer or equivalent), privacy impact assessments should be conducted and data inventories prepared. These programs and your training will need to be refined as new data uses emerge, and the regulatory landscape evolves.

- **Revisit, refine and document risk management approaches to key business risks:** This includes critically evaluating and documenting your approaches to incident preparedness and risk management (including your insurance program). If you have not done so already, you should put in place policies to address privacy and security breaches, including processes to meet regulatory notification requirements.
- **Revisit and refine your IP strategy:** Given its importance, you should be revisiting and refining your IP strategy on a regular basis to protect your freedom to operate and capture evolving value.
- **Revisit and refine your financial strategy and programs:** Review your practices relating to financial modelling, due diligence, bookkeeping, payroll processing, investor reporting, sales enablement and data analysis, as they are essential to streamlining operations and unlocking valuable strategic insights. It is also important to review and update your executive compensation arrangements and strategies to ensure they remain effective and competitive.
- **For more information, see:** [Video – Evolving needs for Emerging and High Growth Companies: Series B](#)

Series C and later stage companies

Companies at this stage of development should:

- **Establish or scale an internal legal team:** When establishing or expanding your organization's legal team, ensure that your counsel is trained on your company's objectives, commercial contracting practices, compliance matters, and business practices. Consider developing playbooks and tailored seminars in order to accomplish this.
- **Implement or scale legal project management strategies:** Legal project management is critical for effectively managing high-volume and high-value customers.
- **Contract management:** As your customer and other contracts grow in volume, implement a contract management solution and staffing to streamline and manage your contract-related processes.
- **Consider acquisition and exit readiness from an employment perspective:** Plan for how your business will approach these complex negotiations, including management carveout plans, executive retention incentives, transaction business and control plans. Ensure you have up-to-date workplace policies as well as signed copies of all employment and contractor agreements for all current employees and contractors as well as signed separation packages/releases from all previously terminated employees and contractors.
- **For more information, see:** [Video – Evolving needs for Emerging and High Growth Companies: Series C and later stage](#)

Contact

If you have any questions, or if you would like to learn more, please contact a lawyer from [Osler's Emerging and High Growth Companies Group](#).

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