



## Start-up Success... *Keep the Heid!*

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The start-up scene in Scotland is thriving, with unique and ambitious business ideas driving innovation in the UK and globally. Entrepreneurs are pushing full throttle, with strong support available across the region from the many investors, incubators, accelerators, innovation centres, co-working spaces and networking events eager to support Scottish business. Start-ups throughout Scotland are well positioned to firmly establish themselves, to grow and to succeed.

Success in the current market, however, requires more than an innovative product and a strong service. A start-up cannot solely focus on its core business offering. It needs to manage employment and/or trading requirements, investment and/or supplier negotiations and a never-ending sea of administration. It can feel to entrepreneurs these factors (often competing amongst themselves!) eat into valuable time starting and developing the core business, but it remains necessary to focus on them in order to protect the business.

In this context, prioritising and managing the legal position of your business as early as possible in its lifespan can be important to its success. Legal pitfalls can give rise to issues that go to the core, or at least the core value, of a business offering. With this in mind, we have set out the following points that start-ups should address to protect their business:



### Protect your Confidential Information

All businesses have confidential information they need to protect, and for some start-ups their confidential information may be the whole of their business. Many start-ups, however, do not focus sufficiently on confidentiality arrangements. Confidentiality is key with investors, suppliers, employees and anyone with whom you share your confidential information. Nobody should be able to disclose and/or use your confidential information without potential for legal repercussion. Entering into confidentiality agreements prior to disclosing any confidential information, is a key protection for any start-up.



### Protect your Intellectual Property (IP)

Rights to IP (e.g. patents, copyright, trade marks etc.) are necessary to allow businesses to commercially exploit IP to the exclusion of others. Entrepreneurs can sometimes take the IP they consider they own for granted, but IP ownership can be complicated. It is important to identify and protect all IP in your business as early as possible in your venture. Failure to do so could lead to ownership arguments, liability and/or a requirement to cease trading.



### Spend time on your Terms and Conditions

Many start-ups do not focus on their terms and conditions of service, despite the fact that the terms and conditions are essential to delineating the responsibility of a business (including its financial responsibility in the event of failure). A start up should understand the market it is operating in, and apply those norms in its terms and conditions. In particular, limitations on liability will require detailed consideration, particularly where the start-up operates in high-risk markets. Without adequate protection, a single instance of liability could risk the very existence of your company.



## Adhere to Data Protection laws

Data Protection laws are complex and they are particularly important since the General Data Protection Regulation (GDPR) came into force, with its potential for massive fines and liability. Very few businesses are exempt from the requirements of data protection law, and many start-ups fail to focus adequately on it. You should therefore ensure that your technology, privacy policies, websites, internal processes, supplier arrangements etc. are compliant with law. If your business is looking for investment or other form of support, remember that large organisations are terrified of liability under data protection law. Compliance with data protection law is increasingly a pre-requisite to success.



## Consider Business Compliance

Some businesses have specific business compliance regulations that apply to them, particular where they operate in the context of highly regulated sectors (e.g. finance, health, pharmaceutical etc.). Where this is the case, it is important to identify your regulatory requirements. Otherwise, it is possible your business may suffer significant fines and reputational risk.



## Consider your Workforce

Start-ups tend to have a close-knit workforce, who are fiercely protective of the business. Notwithstanding, it takes time to grow and can be difficult to maintain the culture of the business as it grows. Retaining talent can be challenging. It is important to have strong employment contracts, with adequate incentivising arrangements.



## Consider IT Security

Few start-ups are immune from technology, and the security challenges that technology presents. IT security policies, and disaster recovery policies, require full and proper consideration and need to be properly implemented.



## Unusual Transactions

As your business grows, you will likely be faced with increasingly risky transactions. These could be business, investment and/or funding opportunities. It is important always to consider the legal risk associated with unusual transactions, which can lead to ownership transfers and/or value-sapping arrangements. Risk is often necessary as businesses grow but it is necessary to ensure the risk is understood and, so far as possible, managed.

CMS is excited to see the successful start-ups that are already emerging from Scotland, and looks forward to further emerging successes in the future. CMS, as a full service law firm with a strong focus on Technology, Media and Communications, is ideally placed to help Scottish start-ups to succeed and has established an equiP Programme which is specifically tailored to support start-ups seeking to scale and grow. For information about the CMS equiP Programme in Scotland, please click [here](https://cms.law/en/GBR/Insight/Start-ups/Helping-start-ups-in-Scotland)<sup>1</sup>.

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<sup>1</sup> <https://cms.law/en/GBR/Insight/Start-ups/Helping-start-ups-in-Scotland>