



PROACTIVE PARTNERING TIPS FROM NAOMI MORISAWA DE KOVEN

Naomi is a business lawyer who provides legal advice to entrepreneurs, business owners and management of small and medium-sized businesses in Ontario. Her clients benefit from her “large firm” knowledge and experience gained as a partner of a national law firm, and her ability to provide “small firm” personal service and cost-effective legal solutions.

She speaks at seminars and conferences on topics relating to small and medium-sized businesses. She is a member of the Small Business Advisory Committee of the Ontario Securities Commission; Advocacy Chair of CATA Women in Technology Forum’s Ottawa chapter; director of Volunteer Ottawa; and co-founder of Your Professional Advisors Group, a group of seven women professional advisors.

TIPS FOR FORMING A LEGALLY EFFECTIVE RELATIONSHIP

- Be Proactive with your Partner - A legally effective relationship starts with a legally effective agreement - take the time at the beginning of your business relationship to put together a written agreement which sets out the terms for your relationship
- Describe out what each of you is offering to the business and to each other, your acceptance of what is being offered, what kind of consideration (cash, property, promises with value) are being exchanged
- Be clear and specific - remember to cover who, what, when, where, why, how and what if

TIPS FOR ENSURING PROMISES ARE KEPT

- At the beginning of the business relationship, agree with your partner on both “carrots” (rewards) and “sticks” (penalties) and make it part of a written agreement with your partner
- Build the rewards and penalties around specific and objective milestones related to the business
- Set fixed penalties for non-performance such as price discounts, indemnification of the business for losses resulting from non-performance, or a reduction of ownership percentages or privileges

TIPS FOR PROTECTING THE “CROWN JEWELS”

- Take stock now of your current and future “crown jewels”: intellectual property such as patents, trademarks and copyrights, as well as trade secrets, customer lists, and business plans
- Include confidentiality or non-disclosure terms in a written agreement with your partner
- Include non-solicitation terms which can help prevent your partner from soliciting the business’ customers and employees for an appropriate time period after the business relationship ends
- Non-compete obligations should be reasonable in time and geographic scope

TIPS FOR PREPARING FOR THE END OF THE BUSINESS RELATIONSHIP

- At the beginning of the business relationship, agree with your partner on a process for handling disputes which can be resolved within a reasonable time period (e.g. alternative dispute resolution such as binding or non-binding mediation or arbitration)
- Agree on the specific terms which allows of one party or the other to terminate the business relationship, and the process to be followed once an event of termination has been triggered
- Specifically describe any parts of the written agreement which are supposed to survive even after the agreement is terminated (e.g. confidentiality, non-solicitation, non-compete, indemnities)



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