

D. J. BROPHY LLB. & ASSOCIATES LEGAL INSIGHT

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Legal issues very often, (and understandably), take the back seat to business priorities, until such time as a major initiative of the business is about to take place. That big deal comes in for the sale of part of the business or that big refinancing that will allow you to expand your business into new markets, and as the saying goes, "That's when it hits you!"

One way to analyze and organize your current state of legal affairs is to organize legal matters into categories. These are the critical matters that require attention in order to smoothly ride out everything from the due diligence process to the closing of the deal:

- *Corporate Finance* — What are my existing financial commitments and do the terms of those agreements in any way restrict what I want to do now. Do I need third parties to consent to my proposal? What have I already pledged to third parties that is not now available to me without release or consent?
- *Corporate Records* — Is my record of directors and officers and all public records up to date and in good standing? Any shareholder agreements, which require specific consents and approvals for major changes in the business?
- *Intellectual property* — what do we own and what have we done to protect it?
- *Real Estate and Equipment* — Are they owned? Leased? What financial commitments are outstanding against them? Have I read the fine print?
- *Sales and Marketing Agreements*, including warranty commitments, volume discounts, major long term supply and/or sales agreements as well as other distribution arrangements;
- *Tax matters* — including G.S.T., Income Tax. Do I manage this important aspect of my business to my greatest advantage?
- *Human Resources* — Do I have clear, written records of employment and benefit commitments? Do employees sign confidentiality and where appropriate non-competition agreements? Are my employees informed of procedures and expectations through written and published policies?
- *Health and Safety in the Workplace* — Have I policies and procedures in place to meet compliance standards?
- *Litigation Matters* — Am I being sued or about to be sued? What do I do to ensure a proactive stance in avoiding litigation?

You may not have a large enough operation to require in house counsel, but by following a method of recording and monitoring the use of your assets and limiting your liabilities you can move from fear to confidence in showcasing your business by knowing where you are at in these very important matters. If you are able to quickly move through the legal aspects and satisfy third parties that you are on top of this aspect of the business, you can be and appear to be very much in charge of the deal-making process.