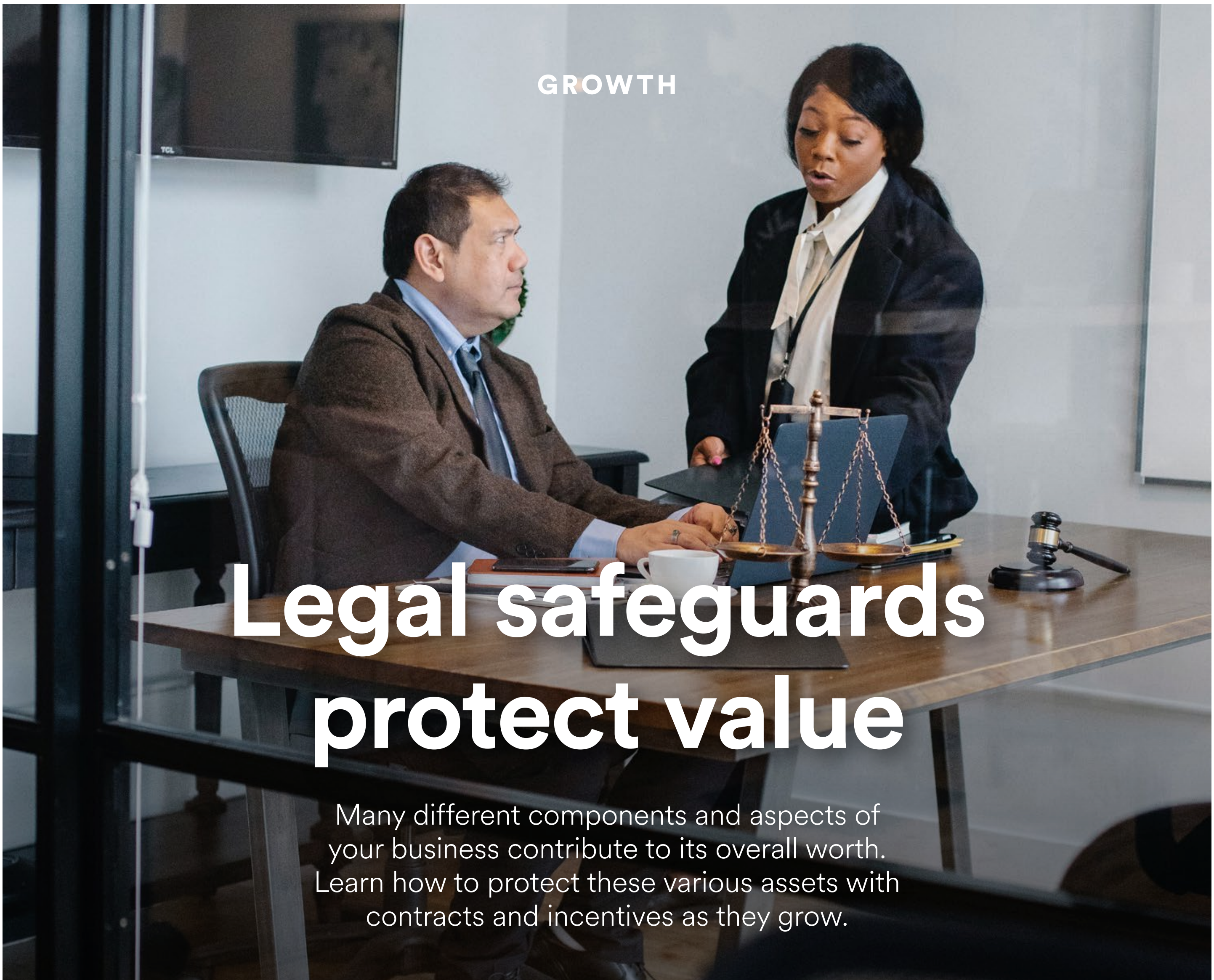
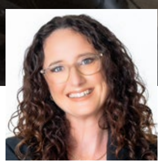


Legal safeguards protect value

Many different components and aspects of your business contribute to its overall worth. Learn how to protect these various assets with contracts and incentives as they grow.



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A business can find itself on an incredible growth trajectory, where enthusiasm and motivation are high, revenue is booming and opportunity is endless, only to be completely wiped out by a legal landmine that goes off when the owners least expect it. This is the rollercoaster of business. Every period of growth provides an opportunity to smooth the track ahead, to step back and fortify the operations, structures and systems, to build a protective wall around the business, to lock in value, minimise value leaks and address the risks in the often fast-approaching future.

There are four simple steps to fortifying a business:

1. **Identify:** Pinpoint the core underlying value in the business.
2. **Protect:** Lock in and protect that value.
3. **Predict:** Forecast the likely risks that could drain value, then build in prediction systems to provide early warnings.
4. **Prevent:** Build systems to minimise and avoid the landmines.

Identifying the fundamental underlying value drivers in your business will help you escalate and lock in value along the way.

Here are some key areas you must identify and consider protecting to fortify your business as you grow:

Your customer base

The value of the customer base is often intertwined with other elements of value, like branding, key staff, technology and location. The value of a particular customer base can vary depending on factors like the lifetime value of each customer, the length of time they stay and how often they repurchase. It will also be affected by how dependable (or 'sticky') they are and the contracts they have with the business.

To protect the value in your customer base from a legal perspective, lock the value into fixed-term contracts. If you're not using subscriptions or memberships or creating recurring revenue contracts, take a step back to see if this is something you can implement.

Your brand
In many businesses, there is a risk that exiting staff might take clients. It's a widely accepted myth that restraints in employment contracts are unenforceable, but this is simply not true. Restraints can be difficult to enforce if they haven't been set up properly, but if they are reasonable, they can be enforceable.

Enjoyment contracts should have strong (but suitable) non-solicitation restraints to protect against staff leaving and taking clients, key partners or other staff. It might also be appropriate to have some staff committed to non-competition restraints.

Your customer databases
In addition to contractual protections, it's important to put up technical or physical barriers to inappropriate dealings with your customer databases. Failing to do this can result in departing staff taking a copy of the database to their new business or new employer and using it for covert marketing to move your customers to their new employer.

Your team
Personnel are often a key component of the value in a business. They make the business run, they hold important business intelligence that often is not properly documented, and they hold relationships with clients and other key value drivers of the business (for example, suppliers and partners).

Contractual protection against staff being poached is one legal strategy to protect the value of the team. The business should have strong employment and contracting agreements to ensure anyone leaving cannot take other staff with them. This should also feature in contracts with customers, suppliers and partners – so they don't poach staff either.

Consider bolstering these protections with a performance-based retention strategy. One highly valuable staff retention strategy is employee shares. This gives staff skin in the game – especially during a growth phase. It helps them see the business in a different light, provides strong encouragement for loyalty to the business and dramatically reduces the risk of them leaving. You could also consider a bonus scheme made up of short- or long-term incentives, or both, tied to performance. This can be a simple way of rewarding great performance and providing some sort of financial lock-in for staff.

Another alternative is using a phantom equity program, which provides a bonus that 'shadows' the performance of the company. This can provide incentives to employees similar to share ownership (by giving them a benefit based on the increasing value of the business) but without diluting the owners' voting and control of the company.

Your intellectual property
For many businesses, intellectual property (IP) can hold a significant component of value. IP refers to creations of the mind – things that are intangible. It can be very clear if real property has been stolen; for example, you can tell if your computer has been stolen because it will no longer be on your desk. But it can be harder to detect infringement upon IP rights and to prove your ownership to enforce those rights.

> "One highly valuable staff retention strategy is employee shares."

There are many types of IP so make sure you investigate what is relevant for your business. Common IP of value across most businesses include:

- the brand sitting in the name of the business and the products
- the website and promotional material
- written material of the business, such as manuals, articles, books, designs
- software code where the business is a developer of software.

Some IP rights require a formal process of registration, while others do not need to be – and cannot be – registered. IP protection includes trademarks, copyright, patents, confidentiality/trade secrets, registered designs, circuit layout rights and plant breeders' rights.

Copyright assignment clauses ensure that value in the work created during a term of employment or engagement with the business is owned by the business. While this is implied in employment situations, it is not implied in contracting arrangements, so it is important to address it in all team contracts.

Your premises or location
In many instances, there will be a component of value sitting in the actual premises of the business. Ultimately, if your location is important, you should do everything possible to lock in the future term of the lease. Do this through multiple future options that will provide you with a long lease term at your control. You could also consider buying the premises to lock in certainty and stability.

Your business structure
Business structure is usually the starting point when looking at the legal underpinnings of a business but this can be a poorly understood area. Businesses often don't understand the structure options available nor the consequences of the approaches they have chosen. Consider how your current structure protects the elements of value in the business; for example, where a business holds a large amount of value in certain assets, it makes sense to segregate that value in a separate entity to protect it from risk.

When you have acquired or invested in a business, it often becomes one of your greatest assets. The challenge is to grow it while making sure you don't lose it. It is imperative to maintain protection for a business as it grows.

Identifying and protecting the assets you have bought and built should be the first step you take to ensuring you are locking in their value. It should also be an often-repeated step as your operations, employees and revenue evolve – so that you can maximise value along the way. ■