

Legal issues in digital transformation for retailers

Preparing for the new reality

The first half of 2020 has brought unprecedented uncertainties, complexities and changes to the retail industry. Most, if not all, retail executives are considering how to turn their challenges into opportunities as they reshape their businesses towards the new norm.

One common response has been the transformation of traditional business models into an e-commerce environment, in an effort to access a global marketplace by redeploying retail activities online. This potentially entails businesses needing to transform the interaction with their customers, their supply chains and their back-of-office operations across the whole business or a business unit using digital technology.

Digitalization clearly brings a number of benefits including enhancing operational efficiencies, improving the customer experience and providing transparency across the different areas of a business' retail operations. Conversely, digitalization also exposes businesses to new risks such as data privacy violations, cyber-attacks, IT systems failures, just to name a few. Careful planning and proper risk management is needed to ensure success in this transformation journey.

Moving your retail activities online is not simply about creating an eye-catching website; it also requires deep understanding of, and dealing with, many issues across different parts of the business including legal, financing, IT, sales and marketing, intellectual property protection, liability protection, human resources and much more.

Our legal professionals have assisted clients ranging from international luxury jewellers to personal care and health supplement providers in handling legal issues arising from the set-up and operation of their online stores. Based on our experience, we have sought to match the relevant commercial framework and steps which many organization address in transforming their business with the relevant legal issues arising:





Step 1: Identifying your product/service offerings and target markets

- 💡 Where do you plan to offer your goods/services? Is it in one single market or across several domestic markets or worldwide? Are there any trade restrictions on entering in these potential markets? How do you restrict access? Do you only wish to sell to end consumers, or to other businesses too? Do you have the right to distribute in these other markets?
- 💡 Are there any legal controls or regulatory requirements that need to be complied with (e.g. registrations, licence requirements, safety standards) for the goods/services in your target markets?



Step 2: Secure capital and right talent

- 💡 Have you negotiated and agreed the key terms with your prospective investors?
- 💡 What are the options available if you need to seek additional funding to commence your e-commerce business and what are the key legal considerations under each option?
- 💡 How does your digitalization plan affect your current employees? Do you need to renegotiate their employment terms and how do you avoid contravening applicable employment and labour laws in this process?
- 💡 In order to reduce your cost base, do you need to outsource some of your functions/employees to a supplier and have you prepared and negotiated outsourcing agreements?
- 💡 Is it feasible to set up an employee share option scheme to incentivize and retain the best talents? What are the legal implications to your business structure and investors?



Step 3: Map out your supply chain

- 💡 Have you clearly set out the suppliers' and outsourced manufacturers' responsibilities and obligations in your supply and shipping agreements?
- 💡 Have you agreed with your supply and shipping counterparts on how customs clearance, delay or damage of your shipment during transportation will be managed? What about insurance?
- 💡 Will your customers transact directly on your retail website or use a third-party distributor's online platform and what are the key legal considerations under each option? Where does the risk lie? When does transfer of title occur? Do you have control over pricing or discounting?
- 💡 Do you need external service providers to assist you with building the online platform and have you considered if their service agreements protect your legal and commercial rights?



Step 4: Determine how you serve your customers

- 💡 What are the applicable legal requirements for marketing your goods or services in your targeted markets? For example, do you need to consider the requirements to display pricing inclusive or exclusive of applicable taxes, delivery charges or engage social influencers to assist with promoting your good or services?
- 💡 Are your terms and conditions for providing your goods or services to customers enforceable and complying with the relevant trade practices and customer protection laws in your target markets?
- 💡 What are the preferred payment methods (e.g. credit cards or other digital wallet payment alternatives) available to your customers and are there additional legal safeguards that need to be observed?
- 💡 What are your policies on the cancellation of orders, return of goods and/or refund and general after-sales customer services? Have such policies been incorporated in your terms and conditions with customers?

Step 5: Choose a business structure and decide where to incorporate entities

-  Are you going to make use of your existing corporate and business structure to operate the online retail business? Do you need to consider some form of corporate restructuring?
-  Are you setting up a new operating entity to run the online stores? Where do you plan to operate the business and how do you identify and choose the most suitable jurisdiction and entity type that will provide the greatest economic and financial benefits in terms of tax efficiency and corporate compliance requirements?
-  What are the company names, trade names and domain names available for your online business? Have you checked if it is possible to adopt the proposed names without infringing any existing user rights? Do you need to register the names in any of your targeted markets?
-  In addition to trade names, have you identified what is your other intellectual property?

Step 6: Look further into the regulatory requirements relevant to your e-commerce business

-  How will you handle personal data collected from customers who visit your online platform or make purchases? Where will you store that data? Does your data privacy policies and practices or cookie policies comply with the relevant laws in your target markets?
-  How far can you use the customer data collected for marketing and analyzing customer retail behaviors? Are there laws regulating these activities in your targeted markets?
-  What digital tools are available to minimize cybersecurity risks of your online platform and subsequent breaches?
-  Do you know what actions need to be carried out if customer data is leaked or stolen, or if your website and IT system is hacked? Are there any mandatory legal or regulatory obligations to report and disclose breaches?
-  Are you aware of any anti-trust and competition laws or regulations applicable in your targeted markets?

Our approach and how we can help

Our team is here to work with you to be ready for a changing retail norm and build a resilient business by supporting and working alongside you through this transformation journey – from an assessment of your needs, through to planning a tailored and commercially practical legal strategy for your business, and finally efficient implementation of the plan to deliver the desired outcomes. Careful planning and strategizing are necessary elements to mitigate unexpected risks, costs and delays in order to pave the way for success.

SF Lawyers and its affiliated member firm, KPMG, are ready to give you an integrated business digitalization solution. We can call at any time on the vast legal, business, IT and tax subject matter experts across KPMG's global network. Below is an illustration of our value proposition.



Collaboration across disciplines

We collaborate with specialists in different areas, e.g. business strategy, IT advisory, legal and tax within the KPMG network to deliver a holistic business solution for you to drive long term growth.



Client-centric

We focus on providing you with business solutions first and foremost, integrating your legal, tax and advisory needs to deliver practical advice.



Global footprint, local experience

Our global legal services network is continuously expanding with a presence in 80 jurisdictions. We can leverage our member firms' extensive experience and provide you with the most up-to-date market information.

Contact us

We are here to help your business.

If a conversation would help, please contact one of the individuals below.

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