



TO RISK OR NOT TO RISK?

THERE'S GOOD RISK, AND THERE'S BAD RISK.

Entrepreneurship is all about taking risks ... ideally, to make a profit. It can be a heroic undertaking, where you put everything on the line—your money, your relationships, your health—to bring your dream to fruition. Good risks involve those that you plan for carefully, that you calculate with a bit of forethought. And then there are rash risks. Risks that expose you to liability unnecessarily. Risks that are absolutely avoidable.

PAYING ATTENTION TO BUSINESS LAW = MANAGING RISKS.

Regulations can seem inconsequential on the surface. Dig deeper, however, and you learn how failure to heed regulations can pose a real threat to your company's stability, cash flow, and future. When you don't know which questions to ask—or gloss over a situation thinking it's not important—you can find yourself in a world of hurt of catastrophic proportions for your company. Business is as much about growth as it is about risk management. Are you managing your risks properly?

THE SOLUTION: IDENTIFY, CORRECT, AND CONTINUE.

This report outlines 10 common legal risks that will sink your business ... if you don't keep watch. When you know where the hazards lie, though, you can take action to steer around them. And correct your course. Use these Top 10 Tips as a starting point, and you'll be sailing on your way to business success.

Disclaimer (because you knew there had to be one!).

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TOP TEN START-UP TIPS

1. FORMING THE BUSINESS AS A LIMITED LIABILITY ENTITY

Many entrepreneurs choose to do business as a sole trader or general partnership because, frankly, it's cheaper, simpler and a lot less tedious.

Using those kinds of business forms leaves **all of your personal assets, including your home, at risk** for the debts and obligations of your business. In other words, if your business owes money, your creditors can sue you personally to collect it. This is not the place to tighten your belt just because you don't feel like spending the money. It could cost you more in the long run not to form an entity. There are legal options that limit your personal liability. Take advantage of them!

2. NOT KEEPING PROPER COMPANY RECORDS

A company, no matter how large (like Ryanair) or small (You Ltd.) has to **follow certain procedures** so that it can continue to shield its owners from personal liability. This includes properly issuing stock to the owners and documenting significant financial decisions.

So what?

When you don't keep up with this record-keeping, you leave yourself vulnerable to claims that you are not operating your company properly and perhaps that you are guilty of reckless trading. The result is that you could lose the personal liability shield that your company was meant to provide. It can also **create difficulties** raising capital or finding a buyer for your business, and raise eyebrows at the Revenue Commissioners. You could also be prosecuted by the Director of Corporate enforcement and barred from being a director of a company in the future.

Have annual meetings of directors and shareholders (yes, even if you are a company of one), and keep records of important legal and financial transactions during the year.

3. NOT HAVING A WRITTEN OWNERSHIP AGREEMENT

Small business owners make the mistake of assuming that because they are excited to be starting a business with someone else, they will always have that starry-eyed attitude. You may get along well and trust each other now—but can you guarantee that will always be the case?

However you should not ignore the fact that attitudes change, particularly when business is going gangbusters or when it's going down the toilet. Needs change too. Your co-owner's lifestyle may be affected by death or disability (of themselves or a loved one) . . . or they may

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simply want to choose a different life path. And when attitudes and needs change, **fight about fairness and money increase**. Without a written agreement, you may leave your business vulnerable to many months of acrimonious litigation. We've seen owners win the litigation but lose the business because the fight depleted all the cash reserves. What's the point of that?

Work out the details—in writing—with your business partners. Ideally, before you go into business together. Look carefully at your ownership, financial contribution, and buyout (exit strategy) terms.

4. DOING BUSINESS ON A HANDSHAKE

"My word is my bond," you may say. Or you can argue that you've done business on a handshake and never been burned.

You may conduct business honourably, but does your contract partner? And bankruptcy courts are littered with the shells of companies that did business on a handshake and crumbled because they had **no real legal recourse** available to them.

As they say—an oral agreement isn't worth the paper it's printed on. Oral agreements are **difficult to enforce** (certain kinds of oral agreements are not enforceable at all), and put you in a—'he said, she said' situation . . . which is a costly dispute to resolve. Also, not having a written agreement can make your business appear amateurish—easy prey to the unscrupulous.

Have a contract that reflects how you do business. That way, you don't have to reinvent the wheel each time you take on a client, or scramble to determine your billing structure for each customer.

5. COPYING CONTRACTS FROM THE INTERNET

In the interest of saving money, you may have downloaded a free contract from the Internet. Or cut-and-pasted bits and pieces from a variety of contracts. Or taken a form contract from a previous employer.

It's often what you don't know – and **what's not included** in the document -- that can hurt you. Internet contracts can be helpful resources for identifying issues for you to think about, but are usually **not well thought out**, nor are they tailored to the needs of your particular business. If an agreement is not drafted in your favour, it may not give you the flexibility and protection that you really need from your business relationships.

So sure, use the Internet for education, but run the document by a trained legal eye to make sure you're properly protected.

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6. RUNNING AN ONLINE BUSINESS WITHOUT THE RIGHT POLICIES

Isn't technology grand? You can slap up a website in a matter of minutes and start listening to the cash register ring from all of your subscribers' purchases. Everyone's used to buying online now anyway, right?

Wrong.

Any time you are collecting **sensitive and personally identifiable information**, there are rules and regulations you need to follow. If you don't know what they are, you can get your company into a world of hurt by violating statutes regarding spamming, collecting information from children, and information privacy.

Also, if you plan to have purchasers from outside of your neighborhood (and hopefully, you are), your website terms serve as your contract with them. Otherwise, you become the online equivalent of Iceberg #4—doing business on a handshake. And in those circumstances, the courts will probably lean more toward protecting your customers than toward helping your small business.

7. NOT PROTECTING YOUR IP AND TRADE SECRETS

Most small businesses create something worth protecting, whether that's a logo, trade mark, confidential customer list, a tag line, a signature method for delivering products or services or copyright materials. This is called 'intellectual property' and legally registered ownership can substantially enhance the value of your business. How have you protected yours?

Copyright laws deem the person who actually created the work--not the person who paid for it--to be the owner. **Without agreements** with your employees, independent contractors, or other business owners, you run the **risk** that they could walk away with the essence of the business that you worked so hard to build. That can also happen if you don't have confidentiality conditions. And if you don't properly copyright, trademark, or patent your intellectual property, you leave it **open and fair game** for others to take and use.

Consider including —work-for-hire and assignment terms in your agreements ... yet another reason that they need to be in writing

8. BECOMING A BANK FOR YOUR CUSTOMERS

In the ideal world, all of our customers will treat us honourably and pay your invoices immediately upon receipt. But that's a hallucination for many small businesses.

When customers don't pay you timely, you **lose the value** of having that money in your bank account. And when was the last time your phone company said, "Sure, I'll wait for you to get

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paid before you pay us"? Cash is to your business as blood is to your body--if you don't have enough flowing, your company can die.

It's important to have **debt collection procedures** that you communicate clearly and actually follow through on. **Don't delay** in sending an invoice, mailing a demand letter, or making a follow-up telephone call. It will show your customers that you're serious about getting paid. When you have a set time frame for following up, the procedure will become second-nature.

9. GETTING INVOLVED IN LITIGATION

Litigation has famously been described as —a process by which one goes in a pig and comes out a sausage. Misunderstandings, missed deadlines, inaccurate payments—all can start as a minor sparks that flare into major conflagrations.

Most small businesses do not have the war chest to properly fund litigation, so it's important to take well-considered steps to avoid it – or at least stanch the bleeding. Alternative means of dispute resolution, like mediation or arbitration might offer a faster and less expensive result. Leave 'it's the principle of the thing' at the door: litigation can **drain your time, resources (oh, the solicitors fees!), and patience**. Sometimes, a compromise settlement, as galling as it may be to accept it, will be the best way to close this chapter, learn the lessons, and move on, as well as save the additional costs of the fight.

Monitor your relationships carefully to make sure you're meeting deadlines—and that your deadlines are met in return.

10. TREATING YOUR BUSINESS AS A DIY PROJECT

Most entrepreneurs start out trying to economize with a do-it-yourself approach. It may seem to make sense when you're cash-strapped, but in the long-run, it will stifle your growth.

There's no way one person can know all there is to know about running a business well—and have the time during the day to do it all. At some point, you need to delegate—whether it's to staff or outside providers. And particularly with technical areas like law and accounting, entrepreneurs can end up **costing themselves more** because they're not trained to spot the issues and problems that can harm them.

That's why it's so crucial to have a team of advisors around you, so that you can benefit from their expertise. Consider getting **regular "checkups"** from them to make sure that you and your company are adequately protected.

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SO, WHAT'S YOUR NEXT STEP?

DO YOU HAVE THE TIME, ENERGY, OR KNOW-HOW TO MINIMIZE YOUR LEGAL RISKS?

At O'Shea Legal we have over thirty years experience in helping entrepreneurs get established and become familiar with the regulations that affect their businesses. We provide a friendly and cost effective service and are programmed to speak to our clients in plain English! Why not contact us now for a chat and legal advice that will in the long run benefit your business and save you time and money?

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