Small Business Guide to RISK Management

A complete guide for business decision-makers

- Assessing risks
- Managing risks
- Creating a risk action plan
- Obtaining the proper insurance
- Next-step resources

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AIG Small Business℠

Association of Small Business Development Centers

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Dear Small Business Owner:

You might not think about managing risks every day because you are too busy managing your business. But whether you realize it or not, a big part of running your business involves managing the risks that are inherent in business. Every opportunity you pursue and decision you make has some level of uncertainty – a degree of risk – that influences your actions.

How you manage risks is an indication of how well your company is managed. The best-managed businesses can generate growth and profits regardless of the business climate. They effectively deal with surprises and roll with the punches that can sidetrack unprepared firms. Perhaps most importantly, they can more confidently pursue the new opportunities that lead to long-term success.

Many small business owners do not fully recognize the importance of proactively managing risks, and fewer still have the skills needed to create and implement an effective risk management strategy. If you're in this group, this book is for you.

Together with the Association of Small Business Development Centers, AIG Small Business has worked to develop this publication and a special curriculum to help you better manage the risks you face. You'll learn how to identify various types of risks and reduce their impact on every aspect of your business.

One important component of managing risks is having the proper insurance. Chapter three of this publication describes the kinds of insurance commonly needed by small businesses. At the back of this book you'll find information about specific small business solutions from AIG Small Business. For more complete information, visit our website at www.aigsmallbusiness.com.

We hope you'll use this publication and the course that it accompanies to build a more profitable business.

Sincerely,

Vincent C. Tizzio
President

ACKNOWLEDGMENTS

Braddock Communications wishes to express its special appreciation to Vincent C. Tizzio, Kelly S. Shambaugh and Colleen R. Donohue of AIG Small Business, whose support made this publication possible. Others who provided invaluable assistance include:

Donna Ettenson, Association of Small Business Development Centers
Liz Klimback, North Texas Small Business Development Center
Donald T. Wilson, Association of Small Business Development Centers

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Printed in the United States of America.

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Chapter I
Introduction to Risk Management and Risk Assessment

What do we mean by "Risk Management"?

In the English language, the word "risk" has a negative connotation because it implies the existence of downside potential. Skydiving is said to be risky because if things don't go quite right, the downside is a long way down. Smoking, too, is risky. So is swimming, driving a car, investing, and being a police officer. In fact, there is risk in almost everything we do because we cannot know for certain what will happen next.

Business is no different. Every aspect of business – every decision, every action, every transaction – involves some level of risk. Business owners take those risks because "risk" also implies something else, namely "reward." Risk-taking is the hallmark of entrepreneurship, not because entrepreneurs like to live dangerously, but because they can envision the rewards as easily as a pessimist imagines the penalties.

Risk management in a business context is all about identifying and living with risks so you can focus on the rewards. Some risks can be eliminated. For example, if you have an old boiler providing steam and pressure for your operations, you can replace it with newer equipment that is not prone to catastrophic failure.

Other risks can be mitigated or reduced to an acceptable level. You probably do this every day when you buckle your car's safety belt. Businesses do it by examining policies and operations, looking at past experience (their own or that of others), and proceeding down a path that minimizes risk without eliminating the potential rewards. One example is the process of test marketing. Businesses rarely roll out a major new product without first testing it among a subset of the market to gauge its potential success. This minimizes the risk of a costly failure without severely limiting the upside potential.

Finally, risks that cannot be readily eliminated or mitigated can be insured by a third party. Insurance effectively involves the sale of your risk to a third party. As noted earlier, risk has a negative connotation, and so the price of risk is negative – you have to pay someone (in the form of insurance premiums) to accept your risk.

Risk management involves eliminating, mitigating or insuring the risks your business faces so you can more confidently pursue the rewards of risk-taking. How do you know what these risks are? By conducting a thorough risk assessment of your business, its operations and its policies.

What do we mean by "Risk Assessment"?

A risk assessment is a detailed, critical analysis of your business with an eye toward the "what ifs." *What if* … a key supplier suddenly goes out of business? *What if* … an employee is involved in an auto accident while on company business? *What if* … a slowdown in the local economy causes you to miss revenue forecasts?

It would be impractical to try to imagine the effects of all possible scenarios. But by examining each component of your business – financing, marketing, human resources, legal structure, and so on – you can gain a better understanding of the real risks you face. You can use this understanding to eliminate, mitigate or insure the risks, as appropriate. Most importantly, you will likely find that by assessing and managing the risks you are aware of, you will be in a better position to handle those “what ifs” that you never would have imagined.

How to Use this Book

This publication is both a workbook and a resource guide. Chapter II is a workbook designed for use in conjunction with a risk management curriculum delivered by your local Small Business Development Center. Your instructor will present important risk management concepts and explain how to apply them to your business. You can follow along in the workbook, using the lessons of the course to answer the questions in the workbook. While you may complete the course and the workbook with a sound risk assessment of your business, a more important and lasting benefit is to learn how conduct a risk assessment – critical thinking skills that you can apply for years to come.

Chapters III, IV, and V provide additional background information and resources to help you understand and apply the concepts of the risk management curriculum. Together with the notes you make in the workbook, this will be a handy reference for the future.

The last section of this book contains information about specific products available from AIG Small Business, whose support has made possible the development of the risk management curriculum and this companion publication.

Chapter II
The Risk Assessment Process

Legal Structure

Risk assessment begins with the most basic aspect of your business: its legal structure. How your business is structured can have a major impact on the risks your company – and you personally – face, both now and in the years to come.

Choosing a legal structure can be a very simple or highly complex issue, and the right choice depends in large part on a careful risk assessment. The criteria used to choose and to assess the risk must be based on more than the size of the company or the money available for start-up. Several risk assessment questions follow and should be answered as completely as possible. Whenever possible the decision should be based on what is most advantageous for the goals of the company. This is usually best determined by either a Certified Public Accountant, a tax attorney, or both.

Options for Small Business Legal Structure

- Sole Proprietor
- Partnership
- Limited Partnership
- S Corporation
- C Corporation
- LLC
- LLP

Risk Assessment Questions for Business Legal Structure

1. If the company is unincorporated your personal assets will be at risk if the company is sued. Do you have significant assets that can be lost?

2. Partnership or limited partnership requires each owner to be responsible for debt or actions taken by others owners. Do any owners have significant assets at risk?

3. Is significant risk involved with the product or service offered?

4. Will all owners, few owners or one owner have a say in the management of the company?

5. Is management centralized or decentralized?

6. What are the tax consequences of the management structure?

7. What taxes apply to the company structure?

8. How will the owners be taxed on salary, distributions or dividends?

9. What taxes apply if one or more owners sell their interest?

10. What are the tax consequences if the company acquires another business or changes legal structure?

11. Are there enough funds to begin the business from personal assets or loans from friends or relatives?

12. Will the owner(s) be looking for outside investors?

13. What will the investor(s) want: Participation in management, more ownership than the investment supports, high interest rate, repayment of investment or retained ownership?

14. Will the legal structure be one that will attract outside investment?

15. Are personal guarantees required? Will this affect liability protection of the legal structure?

16. Will the company be operated in one city or county jurisdiction?

17. Will the company have to comply with multiple jurisdictions?

18. Will the company operate in more than one state jurisdiction?

19. What permits, registrations or licenses are required?

20. Will the company be required to operate as a foreign company or corporation?

21. Will the company's legal structure be recognized the same in every jurisdiction in which the company operates?

22. What “continuity of life” will be determined by the legal structure chosen?

23. Will the “continuity of life” affect the ability of the company to raise capital?

24. What tax treatment will be determined by the IRS, for the company, based on the “continuity of life”?

Legal Structure Summary Checklist

❑ Do you have significant personal assets?

❑ Is it important to you to protect these assets from a business-related lawsuit?

❑ Will there be other owners?

❑ Are you comfortable with being responsible for the debt or actions taken by these owners?

❑ Do any other owners have significant assets that need protecting?

❑ What are the risks and potential liabilities associated with your product or service?

❑ How do you want your company managed?

  ❑ The company will be managed by one person

  OR

  ❑ The company will be managed by a group of people.

❑ Do you understand the tax implications of your proposed structure?

❑ Will you be looking for outside investors?

❑ Have you determined what incentives you are willing to offer?

❑ Will your company operate in more than one state or local jurisdiction?

❑ What “continuity of life” do you need for your business?

❑ Based on your answers to these questions and other issues, decide if you will register your business as: sole proprietor, partnership (general or limited), corporation, or limited liability company (LLC/LLP).

- ❑ If you choose to incorporate, decide if you want to be taxed as a C or an S Corporation.

Business Plan

A good business plan is one of the most valuable tools a small business owner has on the road to success. In addition to providing guidance to owners and managers, a business plan is required by banks for many types of business loans. Like a good newspaper article, the business plan answers the basic questions: Who?, What?, Why?, Where?, When?, and How? It is a summary of the business owner's objectives and how to get there.

In addition to defining opportunities, a business plan must also address risks. How will the firm cope when things don't go according to plan? What flexibility or contingencies are built into the plan to ensure that minor surprises in the beginning do not doom the enterprise later?

TIP: One of the best places to get advice and counseling for developing your business plan is your local Small Business Development Center.

Risk Assessment Questions for a Business Plan

1. Do you have a Business Plan that is up to date and being used?

2. Does the Business Plan need to be changed based on information from the Risk Assessment?

3. Have you identified which risks have the most potential to affect the business?

4. Have you done Cost/Benefit analysis on significant risks to decide what action to take?

5. Does the Business Plan contain a Risk Management Plan based on the Risk Assessment?

Business Plan Summary Checklist

- ❑ Do you have a business plan?
- ❑ Does the plan describe your current operations and direction for your company?
- ❑ Have you identified, and applied for, any required licenses or permits?
- ❑ Have you clearly defined your products and services?
- ❑ Have you included your business' legal and management structures?
- ❑ Have you identified your target market?
- ❑ Have you described marketing strategies for getting and keeping customers?
- ❑ Does your plan include current and projected financial information?

Risk Management Component

- ❑ Does your business plan include a risk assessment and a written risk management plan?
- ❑ Identify potential risks associated with your business.
- ❑ Rank these risks based on frequency and severity.
- ❑ Identify and evaluate options to eliminate, reduce, or manage risks.
- ❑ Address high priority risks first.

Using the Plan

- ❑ Do you refer to your business plan when making business decisions?

- ❑ Do you update your business plan at least annually, or sooner if a significant change occurs?
- ❑ Do you periodically update your financials, and revise projections based on actual figures?
- ❑ Compare monthly or quarterly reports to the current plan.
- ❑ How do you deal with business opportunities not specified in your plan?
- ❑ Thoroughly evaluate all associated costs and benefits (long- and short-term).
- ❑ If you decide to make significant departure from plan, revise plan to reflect change.

Business Environment Scan

Entrepreneurs by their nature are risk-takers – men and women who are willing to take a chance and rely on their own wits, talents, and resources to build a business. But even the most talented entrepreneur with a brilliant business plan can be surprised by the ups and downs of a fickle economy and a fast-changing marketplace.

The business cycle is just one aspect of change. Every business owner should expect that there will be periods of growth and recession, and it is almost impossible to predict when the cycle will turn. There are other marketplace changes that can have a major impact on the success of a particular business:

- Changes in technology. As new technologies are introduced, others become obsolete. New industry standards replace the old. These changes are most visible in industries such as consumer electronics (e.g., the introduction of DVD) and information technology (e.g., networking standards, web-enabled peripherals), but technology has a competitive impact on almost every industry.

- Changes in access to financing. The availability of business financing typically mirrors general business conditions; when times are good, money is easier to get. The result is that financing is hardest to obtain during the slow times when you are likely to need it most. Even when interest rates are low – as they often are during a recession – the lending criteria of lenders may become stricter, making it harder to qualify for financing.

- Changes in consumer behavior. The preferences and habits of people change over time, often in concert with other trends in the marketplace. One recent example is the growth of Internet shopping. Even when customers don't buy online, they often do their research there, and this can affect what products they buy and from whom.

- Changes in local conditions. Road construction, new housing, local ordinances, and many other factors can dramatically affect the cost of doing business in a particular area. For example, road construction can keep customers from reaching your location; your city may pass a law limiting smoking in public places; and rapid growth can increase costs for building leases, utilities, and transportation.

Risk Assessment Questions for a Business Environment Scan

The Economy

1. What is the 1 year general trend of the current economy, predicted trend for following year and predicted trend for 5 years?

2. Does the business have a growth plan if the economy is very good?

3. Is the company continually improving productivity to prepare for when money is tight?

Finance and Financing

1. If business is good, does the company have a line of credit or an SBA loan to develop a good credit rating for when business is slow?

2. Does the business have a plan for growth if the economy is stable or not growing?

3. Does the business have a plan for growth or for taking advantage of an economic downturn?

Sales Trends and Meeting Market Needs

1. Does the company have a plan for a reduction in size if sales trends move away from the company?

2. Does the company have a plan for growth if sales trends move toward the company?

3. Do either of the plans include which suppliers would be used, which employees would be reduced or how and from where would new employees be hired, or what additional equipment or facilities would be needed, what it would cost and where would they be found?

Receivables

1. Does the company have a process for regular aging of Accounts Receivable?

2. Is the company collecting Accounts Receivable approxi-

mately within the time of the terms being offered? Is this equivalent to the industry standard?

3. Does the company have a process to collect immediately any accounts that are due past the terms?

Payables

1. Does the company have a regular process for keeping payables current and taking advantage of any discount offered for early payment?

Cash Flow

1. Does the company plan for understand how cash flow determines the health and possibly the survival of the company, even if profitable?

2. Does the company do a cash flow analysis monthly to determine the history or pattern of how cash moves through the business and sometimes through individual contracts?

3. Does the company do a monthly cash flow projection based on actual operations knowledge to predict any period when cash could be tight, particularly when business is very good?

Customers

1. Can the company's customers easily determine the products or services offered?

2. Does the company have a written Customer Service Policy?

3. Can the customer find the business location easily?

4. Is the business location one to which customers don't mind coming?

5. If the business is Internet only, does the business have a plan if access is interrupted?

6. Is the business customer-friendly, efficient and cost competitive?

7. Do you know how the customer changes purchasing habits depending on the economy or the customer's perception of the economy?

8. Does the business have a plan if a new competitor enters the market?

9. Does the business have a plan if a competitor is lost?

10. Does the business have a plan if a catastrophe keeps customers from getting to the business location or if the customer base is removed from the business location?

Suppliers

1. The business may only be as strong as its weakest supplier. How familiar are you with each company in the supply chain? Their financial health, reliability, quality of goods, terms, and competitive pricing?

2. Does each supplier provide good customer service?

3. Does supplier location provide risk to delivery of material?

4. Does supplier efficiency or productivity affect reliability or price?

5. Will the supplier's perception of the economy cause them to increase or decrease their number of employees or product inventory?

6. If your suppliers gain or lose a competitor will it affect delivery time, prices, amount of material available for your business?

7. Does the business have a plan if a catastrophe keeps a supplier from reaching your business or eliminates the supplier.

Business Environment Scan Summary Checklist

Economy & Finance

❑ Have you researched historical and current trends of the economy and your industry?

❑ What are projected trends for the economy and your industry?

❑ Next 12 months

❑ Next 3-5 years

❑ Do you have a plan for dealing with economic upswings and downturns?

❑ Do you have a plan to build your credit during good times so that you have financing available during slow times?

❑ Do you have a plan to increase market share during economic downturns?

Marketplace Changes

- ❑ Do you have a plan for downsizing in case of persistent declining sales and for growing with sustained sales increases?
- ❑ Does your plan address specifics related to workforce, supply chain, equipment and facilities?

Receivables and Payables

- ❑ Do you have a process for aging Accounts Receivable and collecting on past due accounts?
- ❑ Do you use your collection process constantly and consistently?
- ❑ Do you have a procedure for ensuring payments are made on time (or earlier if discount offered for early payment)?

Cash Flow

- ❑ Do you do an annual cash flow projection by month?
- ❑ Do you do monthly cash flow analyses and compare these to projections?
- ❑ Are these analyses used as a management tool for predicting potential busy/slow times for the company?
- ❑ Do you have processes to bring actual cash flow in line with projections?

Customers

- ❑ Is it easy for potential customers to determine what products/services you offer?
- ❑ Is it easy for customers to find you (applies to physical location or Internet website)?
- ❑ Do you have a written customer service policy which ensures friendly and efficient service and competitive pricing?
- ❑ Is the entire staff, including new hires, thoroughly trained on the customer service policy?

- ❑ Do you have plans for dealing with increases or decreases in competition?
- ❑ Do you have a contingency plan for dealing with a catastrophe which would prevent access to your place of business (physical or virtual location)?

Suppliers

- ❑ Are you familiar with suppliers' financial health and record regarding quality, customer service, reliability, pricing, and payment terms?
- ❑ How will economic conditions or competition affect availability of products and services you need to operate your business?
- ❑ Does your contingency plan include alternative suppliers? Have you researched the quality and reliability of these suppliers?

Marketing Plan

A marketing plan is a blueprint outlining how a company plans to price, market and sell its product or service. Like a business plan, a marketing plan is useful in focusing a company's efforts on specific objectives. While there are numerous ways to design a marketing plan, most have some or all of the following elements:

Introductory or Mission Statement

This is a short paragraph that states in generic terms the nature of the company, its current status, and what its objectives are.

Sales History and Objectives

Summarize the firm's sales performance over the past two or three years and give a one- or two-year projection for future sales. This section should also give some indication of the overall market size. For new companies with no sales history, this section should contain estimates of sales for the first and second year, along with an explanation of how the estimate was made.

Customer/Market Profile

Describe who your typical customer is and why they need your product or service.

Competitive Environment

It is important to know who your competitors are, how big they are, and what their strengths and weaknesses are. In addition to direct competitors, companies should describe other companies that provide similar products or services and those whose products or services offer similar benefits to users.

Strengths and Weaknesses

Describe your own products and operations with a focus on competitive strengths and weaknesses.

Marketing Initiatives

Describe what you plan to do to market your products or services in the coming year and what you expect the results to be.

Risk Assessment Questions for a Marketing Plan

Research and Analysis

1. Do you have a market analysis plan to determine demand for the product or service the franchise will offer?

2. Do you have a market analysis plan to determine how to best reach potential customers and best potential location for the business?

3. Do you have access to an "Industry Analysis" that provides a real evaluation of the business opportunity?

Market Need/ Product Line and Product Mix

1. Does the company know what need the customer is fulfilling when buying the product or service being offered?

2. Does the company have a process to look for the changing needs of the customers to anticipate new sales opportunities and a system to change what the company offers.

3. Is the company investing in research and development to add to the product line or the product mix?

Marketing Plan Summary Checklist

Essential Components

- ❑ Do you have a marketing plan, containing the following information?
- ❑ Introduction, giving a concise overview of your business, your mission and objectives
- ❑ Sales History or projection of the first 1-2 years' sales
- ❑ Target Market, based on:
  - ❑ Market analysis to assess demand for your product or service
  - ❑ Demographic information supporting your business location and/or geographic area targeted
  - ❑ Market Trends and projected future demand
- ❑ Identify specific needs your product or service fills.
- ❑ Identify how your product or service differs from competitors'.
- ❑ Include plan to deal with changing needs and adjust your product mix accordingly.
- ❑ List research and development capabilities that will enable you to add new products or services.

- ❑ List of Competitors and their strengths and weaknesses
- ❑ Marketing Strategies and expected results

Using the Plan

- ❑ Do you refer to your plan when making marketing decisions?
- ❑ Do you have a way to track results of specific marketing campaigns?
- ❑ Do you have a method to rate cost effectiveness of marketing strategies?
- ❑ Do you routinely evaluate results to determine if strategies are achieving your objectives?
- ❑ Do you evaluate and revise your marketing plan at least annually, and more frequently if needed?

Operations Plan

The operations plan is a blueprint for integrating, implementing, and testing the plans and processes of your business – the business plan, the marketing plan, the financial plan, and other ideas and processes that will help you fulfill your vision for the business. In other words, it's an integrated plan for turning your ideas into reality.

Where a business plan or a marketing plan requires educated guesses and informed conjecture, the operations plan involves practical solutions – specific steps – to operate smoothly.

Operations involves the day-to-day functions of your business, and you need to consider what specific steps you can take to manage the risks you'll face every day. This includes everything from making sure you have the proper permits and licenses, to dealing with customers and employees, managing assets and suppliers, and ensuring compliance with applicable laws and regulations.

Business Permits and Licenses

1. Business permits and/or licenses can be required and different for every city, county and state in which you operate your business. Have you checked with each jurisdiction for permits and licenses that are required?

2. Is the business being operated without required permits or licenses and are you aware of the penalties for each jurisdiction?

Customer Diversification

1. Does the company track what percentage of total business comes from each customer?

2. Does the company have a percentage that no one customer should be greater than?

3. Does the company have a process to determine whether taking new or additional business from a customer will be beneficial or detrimental?

4. If a new customer is added that is a large percentage of total business, does the company have a plan to dilute the percentage?

5. Does the company have a plan to manage the loss of a large percentage customer?

Supplier Diversification

1. Does the company have a process to track quality, on time delivery, competitive pricing and terms, ability to expand supply and the general health of the business for each major supplier of parts, products, supplies or services?

2. Does the company have dependable alternative suppliers for all major parts, products, supplies or services needed to operate?

3. If more than one supplier is used for the same parts, products supplies or services has it been determined if those suppliers have any common suppliers in their supply chain?

Taxes

One of the biggest headaches for most small businesses is complying with the tax code – making sure you pay the right amount and file on time. In fact many small businesses don't mind so much *paying* the taxes; it's the time-consuming record-keeping and filing that is truly burdensome and laden with risk. While the types of taxes vary by state, a typical small business must deal with federal income tax, Social Security, Medicare, unemployment taxes, state income tax, sales tax, excise tax, franchise tax, property tax, and the list goes on.

Becoming an expert in all areas of business taxes is probably not practical and at some point you will probably want to hire a Certified Public Accountant (CPA) or a Tax Attorney. Hiring a professional can relieve you of much of the paperwork and make it easier to comply, but it does not release you from the responsibilities. For proper protection you need to learn enough to understand the documents your tax professional will ask you to sign.

1. Does the company have or need to apply for an Employer Identification Number (EIN)?

2. Does the company have in place processes to meet requirements for Federal employment taxes, State employment taxes, unemployment insurance, social security

deposits, employees completing withholding certificates (Form W-4), all employees completing Immigration and Naturalization Service Employment Eligibility Verification (Form I-9), minimum wage, overtime, and child labor laws?

3. Has the company established a 'Tax Year' for keeping records and reporting income and expenses and is the company using a calendar year or a fiscal year?

4. Has the company established a consistent accounting method, which was determined by whether it is better for the company to report income for the tax year in which it was received and deduct expenses for the tax year in which they were paid (Cash) or report income for the tax year in which it was earned, regardless of when payment is received, and deduct expenses for the tax year in which they were incurred, regardless of when payment is made?

5. Does the company have an orderly and safe record-keeping system that clearly shows the company's income and contain all of the backup or supporting documentation, including business checkbook, accounting journals, ledgers, invoices, receipts, other purchase documents, and documents for assets such as property, machinery, and furniture?

6. Does the company have a plan and a process to safely store all documents for the proper length of time as required by law or regulation?

7. Does the company do business mainly in cash and use a system to properly track total revenue and expenses such as: pre-numbered invoices or receipt, Maintain a separate business bank account, Pay for all business ex-

penses using checks from your business bank account, rather than from your personal bank account, use a spreadsheet-like ledger to maintain continuous entries of all transactions, track money taken from the business which is not salary, deposit all customer payments in full in the bank whether cash or check, and use this basic system throughout the year for annual tax returns or quarterly estimated tax payments?

8. Does the company annually provide each employee a W-2 by January 31 (for individual income tax purposes), Copy A of Forms W-2 to the Social Security Administration by the last day of February (last day of March if filing electronically), and a Form W-3 Summary Transmittal?

9. Does the company make timely Federal Tax Deposits using Form 941 and Form 940 or if filing electronically the Electronic Federal Tax Payment System or deposit coupon, Form 8109-B?

10. Does the company file Form 1099-MISC, to report payments for services performed for the business, if payment was made to someone who is not an employee; payment was made for services; payment was made to an individual, partnership, estate, or in some cases, a corporation; and payments were made to the payee of at least $600 during the year.

Operations Plan Summary Checklist

- ❑ Have you determined if business permits or licenses are required from city, county state, or federal agencies?
- ❑ Have you obtained, or began the application process for required permits or licenses?
- ❑ Are you operating without required permits or licenses?

- ❑ Are you operating within the zoning laws for your area?

Customer Diversification

- ❑ Do you have a plan to ensure that no single customer makes up more than a set percent of your total business?
- ❑ Have you determined what that percentage should be?
- ❑ Do you have a plan to deal with loss of a large percentage customer?
- ❑ Do you have a process to analyze customer quality (effort vs. reward)?

Supplier Diversification

- ❑ Do you have a system to track performance of current suppliers?
- ❑ On-time delivery
- ❑ Correct and complete delivery of order
- ❑ Good customer service policies
- ❑ Have you located dependable alternate suppliers for key products and services?
- ❑ Do you know where your suppliers get their products?
- ❑ Are there common suppliers in their supply chain?

Employment Taxes

- ❑ Does your company have employees?
- ❑ If yes, you are required to have an Employer Identification Number (EIN).
- ❑ To apply, file form SS-4, available at http://www.irs.gov/pub/irs-pdf/fss4.pdf
- ❑ For more information see IRS Pub. 1635, http://www.irs.gov/pub/irs-pdf/p1635.pdf
- ❑ Do you have a process to ensure timely deposits of employment taxes?
- ❑ Do you have completed withholding certificates (Form W-4) on file for all employees?

Income Taxes

- ❑ Will your business tax return be included in your personal return (sole proprietors) or will you file a separate tax return for your business?
- ❑ Does your state require a tax return for your business?
- ❑ Do you have a process to track deadlines and ensure returns are filed on time?

Sales Tax

- ❑ Does your state/local area have a sales tax?
- ❑ Do you know what products and services are taxable?
- ❑ Does your invoicing system identify taxable items and apply the correct sales tax for your local area?
- ❑ Do you have a system to ensure you do not pay tax on items for resale, and pay tax on items used in your business?

Accounting and Recordkeeping

- ❑ Have you determined if you will establish a “tax year”, or use a calendar or fiscal year?
- ❑ Have you determined if your accounting system will be on a cash or accrual basis?
- ❑ Do you have a recordkeeping system to maintain and organize receipts, checks, and other accounting documents?
- ❑ Do you maintain (in an orderly fashion) tax-related records for the required time period?
- ❑ Do you have a system to track revenue and expenses?
- ❑ Do you have a system to ensure W-2s and W-3s are completed and delivered before the due dates?
- ❑ If you have paid a person or entity over $600 over the previous year, (excluding employee wages), do you have a system to determine if you need to file form 1099-MISC?

Human Resources

Employees are necessary for most businesses to survive and grow, and so many business owners focus on the benefits of employees in terms of productivity, increased sales, and new opportunities. But from a liability perspective, one of the riskiest things a business can do is to hire employees.

These risks arise not only from the actions of employees (for which the employer can be held liable), but also from the employment experience itself. Numerous federal and state laws regulate workplace safety, benefits administration, employment practices, employee wages and hours, labor-management relations, environmental hazards, and other employee-related matters. Even the appearance of violating the letter or spirit of labor-related laws can expose the owners and managers of a firm to personal and corporate liability, statutory fines and penalties, and even criminal investigation.

At a minimum, employers should ensure that they are in strict compliance with all applicable federal and state labor regulations. A next step would be to institute proactive management practices and policies to educate managers and employees about their respective rights and responsibilities. Employee lawsuits are often a symptom not only of perceived transgressions, but also of low employee morale brought on by ineffective policies or indifferent management attitudes.

Finally, any assessment of risk associated with human resources should include an examination of appropriate insurance policies to protect the firm and its owners and managers from the damaging effects of a lawsuit brought by an employee or outside party.

Hiring and Termination

1. Does the company have or practice any procedures or policies that violates Title VII of the Civil Rights Act of 1964, protecting individuals against employment discrimination on the basis of race and color as well as national origin, sex, or religion?

2. Does the company have or practice any procedures or policies that discriminates against any employee or applicant for employment because of his/her race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment or make employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups, marriage to or association with an individual of a different race; membership in or association with ethnic based organizations or groups; or attendance or participation in schools or places of worship generally associated with certain minority groups?

3. Does the company have or practice any procedures or policies that discriminates against any employee or applicant because of the individual's national origin, birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group or marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group?

4. Does the company have any procedures or policies that violates the Pregnancy Discrimination Act, an amendment to Title VII of the Civil Rights Act of 1964, protecting

against discrimination on the basis of pregnancy, childbirth or related medical condition? Are all women affected by pregnancy or related conditions treated in the same manner as other applicants or employees with similar abilities or limitations?

5. Does the company have policies in place to prevent and to stop sexual harassment, which is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964?

Harassment

1. Does the company policies and procedures address unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment?

2. Does the company's sexual harassment policies account for a variety of circumstances, such as:

   - the victim being a man or a woman
   - same sex harassment
   - the harasser being the victim's supervisor
   - an agent of the employer
   - a supervisor in another area
   - a co-worker
   - a non-employee
   - not being the person harassed but affected by the offensive conduct
   - the victim does not suffer economic injury or lose their job
   - when the harassment is not unwelcome?

Equal Pay Act 1963

The Equal Pay Act of 1963, as amended, prohibits sex-based pay differences where substantially equal work performed in the same establishment under similar working conditions requires equal skill, effort and responsibility. The Act applies to all employers.

1. Does the business have any procedures or policies that discriminates between employees on the basis of sex, by paying wages to employees at a rate less than the rate that wages are paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions?

2. Does the business have an exception where payment is made based on:

   - a seniority system?
   - a merit system?
   - a system which measures earnings by quantity or quality of production?
   - a differential based on any factor other than sex?

Age Discrimination

The Age Discrimination in Employment Act of 1967, as amended, prohibits age discrimination against employees who are 40 years of age or older. It applies to employers with 20 or more employees.

1. Does the business have procedures or policies that violates the Age Discrimination in Employment Act of 1967 (ADEA), by discriminating against applicants and employees 40 years of age and older on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment?

Religious Discrimination

1. Does the company have procedures or policies that discriminate against individuals because of their religion in hiring, firing, and other terms and conditions of employment?

2. Does the employer try to reasonably accommodate the religious practices of an employee or prospective employee using any of the following examples:

   - Flexible scheduling
   - Voluntary substitutions or swaps
   - Job reassignments
   - Lateral transfers are accommodating of an employee's religious beliefs.

3. Does the company have procedures or policies that schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious holiday?

4. Does the employer require payment of union dues to a labor organization that is prohibited by an employees religious practices or is payment of an equal sum to a charitable organization allowed?

5. Does the company have procedures or policies that violates nondiscriminatory provisions of Title VII, by requiring participation in "new age" training programs, designed to improve employee motivation, cooperation or productivity through meditation, yoga, biofeedback or other practices? Does the employer provide alternatives for any employee with objection based on religious beliefs,

whether or not the employer believes there is a religious basis for the employee's objection?

Americans with Disabilities Discrimination

The Americans with Disabilities Act of 1990 (ADA) Title I prohibits discrimination in employment or hiring against individuals who meet job-related requirements of a position and can perform the essential functions of the job. Employers are required to make “reasonable accommodations” for such employees. ADA applies to employers of 15 or more workers and employment agencies or labor organizations of 15 or more workers.

1. Does the company have any procedures or policies that violate Title I of The Americans with Disabilities Act (ADA) by discriminating against people with disabilities in any of the following:

    - Employment
    - Transportation
    - Public accommodation
    - Communications
    - Governmental activities
    - Telecommunications relay services?

The Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act sets minimum wage, overtime, working conditions, child labor, and other basic employment standards. The FLSA applies to all employers.

1. Does the company have any procedures or policies where workers covered by the Act are not paid the current minimum wage of $5.15 per hour and overtime pay at a rate of not less than one and one-half times their regular rate of pay after 40 hours of work in a workweek? (Not including exceptions that apply under specific circumstances)

2. Does the company as required, keep all records on wages, hours, and other items, which are generally maintained as an ordinary business practice?

3. Does the company have any procedures or policies that comply with the wages, hours, and safety requirements for Minors (individuals under age 18) working in jobs covered by the Act? (not including exceptions. If state law and the FLSA overlap, the law that is more protective of the minor will apply.)

4. Does the company pay all wages on the regular payday for the pay period covered? (Deductions made from wages are not legal if they reduce the wages of employees below the minimum wage or reduce the amount of overtime pay due under the FLSA.)

5. Does the company have any procedures or policies that does not comply with the FLSA when there is an employment relationship between the "employer" and an "employee? Has the company made proper determinations as to who is an employee?

Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) requires employers to grant eligible employees up to 12 weeks of job-protected leave (unpaid) within a 12-month period to care for a new child, attend to a seriously ill member of the immediate family, or attend to the employee’s own serious health condition. Upon returning from leave, employees are entitled to the same or equivalent job, and health benefits must remain effective during the term of leave. FMLA applies to employers with 50 or more employees.

1. Does the company have any procedures or policies that violates the Family and Medical Leave Act (FMLA)?

2. Does the company have a plan to provide certain employees with up to 12 weeks of unpaid, job-protected leave per year, with group health benefits maintained during the leave for any of the following reasons:

   - Birth and care of the newborn child of an employee? (time taken off work due to pregnancy complications can be counted against the 12 weeks of family and medical leave.)
   - Placement with the employee of a child for adoption or foster care?
   - Care for an immediate family member (spouse, child, or parent) with a serious health condition?
   - Medical leave when the employee is unable to work because of a serious health condition?

3. Does the policy determine employee eligibility for leave by having worked for their employer:
   - at least 12 months, at least 1,250 hours over the past 12 months
   - and work at a location where the company employs 50 or more employees within 75 miles
   - and determine the minimum 1,250 hours of service, compensable hours or work, according to FLSA principles.

Immigration Reform and Control Act

The Immigration Reform and Control Act of 1986 ensures that employees are legally permitted to work in the U.S. (form I-9); prohibits employment discrimination based on national origin, regardless of citizenship. This law applies to all employers.

1. Does the company have between 4 and 14 employees and have any procedures or policies that violate the Immigration Reform and Control Act of 1986 (IRCA), for example:

   - Hires any person who is not legally authorized to work in the United States
   - Does not verify the employment eligibility of all new employees.
   - Discriminates in hiring and discharge based on national origin or citizenship status.
   - Discriminates in hiring based on foreign-looking or foreign-sounding job applicants.

For additional information contact:
United States Department of Justice
Office of Special Counsel for Immigration-Related
Unfair Employment Practices
(800) 255-8155 (employer hotline/voice)
(800) 237-2515 (TDD)
http://www.usdoj.gov/crt/osc

Human Resources Summary Checklist

Title VII of the Civil Rights Act

❑ Do you have a written employment policy?

❑ Do your policies and practices prevent discrimination on the basis of:

  ❑ Race, color, or national origin?

  ❑ Religion?

  ❑ Sex?

  ❑ Pregnancy, childbirth, or related medical condition?

❑ Do your policies and practices comply with all state and local nondiscrimination standards?

❑ Do nondiscrimination policies apply to all aspects of employment including hiring, promotion, discharge, pay, fringe benefits, job training, classification, and referral?

Sexual Harassment

❑ Do you have a written sexual harassment policy posted in a prominent location?

❑ Do you provide employee training, including a system for filing and investigating complaints?

❑ Is the policy implemented and enforced consistently?

❑ Do your policy and employee training include the following aspects of the law:

  ❑ The perpetrator and victim may both be either male or female?

  ❑ Perpetrator or victim may be a non-employee or contractor?

  ❑ Victim may be anyone affected by offensive conduct?

  ❑ Harassment may occur without economic injury to or discharge of the victim?

❑ For more information: http://www.eeoc.gov/types/sexual_harassment.html

Equal Pay Act

❑ Are males and female employees paid equally performing substantially equal work?

❑ Are exceptions based on one or more of the following:

  ❑ Seniority or merit system?

  ❑ System which measures quantity or quality of production?

  ❑ System based on other legal factors?

❑ Are you aware that employers may not reduce wages of either sex to equalize pay

❑ For more information: http://www.eeoc.gov/types/epa.html

Age Discrimination in Employment Act (ADEA)

❑ Do you have 20 or more employees? If yes, you cannot discriminate against individuals age 40 or older. If no, ADEA does not apply; skip to next section.

❑ Do your job notices or requirements specify age limits?

- ❑ If yes, age must have been proven to be a bona fide occupational qualification.
- ❑ Are employee benefits available to all employees regardless of age?
- ❑ For more information: http://www.eeoc.gov/types/age.html

Religious Discrimination

- ❑ Could your company dress code or work schedule interfere with an employee's religious practices?
- ❑ Do you reasonably accommodate employees' religious practices through flexible scheduling, voluntary substitutions, job reassignments, or lateral transfers?
- ❑ Are there mandatory training programs that an employee might find objectionable, due to religious beliefs?
- ❑ If yes, do you provide alternative options?
- ❑ http://www.eeoc.gov/types/religion.html

Americans With Disabilities Act (ADA)

- ❑ Do you have 15 or more employees? If yes, you must comply with ADA employment provisions. If no, ADA does not apply; skip to next section.
- ❑ Do your employment practices and policies ensure equal consideration and treatment of qualified individuals who have disabilities?
- ❑ Are you prepared and willing to make "reasonable accommodations" for disabled employees?
- ❑ For more information: http://www.eeoc.gov/types/ada.html

Fair Labor Standards Act (FLSA)

- ❑ Are wages equal or higher than federal and state minimums (currently $5.15/hour federal)?
- ❑ Are non-exempt workers paid time and one half for hours over 40 in any week? http://www.wagehour.dol.gov
- ❑ Are required posters prominently displayed? http://www.dol.gov/osbp/sbrefa/poster/main.htm

- ❑ Does your company have employees under age 18?
- ❑ Do the hours worked and types of jobs performed by minors comply with federal regulations?
- ❑ http://www.youthrules.dol.gov/employers/default.htm

Family and Medical Leave Act (FMLA)

- ❑ Do you have 50 or more employees? If no, you are exempt from the FMLA.
- ❑ Does your policy provide eligible employees with up to 12 weeks of unpaid leave while maintaining group health benefits?
- ❑ Eligibility is based on length of time and hours worked for employer.
- ❑ http://www.dol.gov/esa/whd/fmla/

Immigration Reform and Control Act

- ❑ Do you verify employment eligibility before hiring new employees, including a completed I-9 Form and documentation of identity and employment eligibility?
- ❑ Do you copy and file acceptable documents as listed on page 3 of the I-9 Form?
- ❑ Do your employment policies (both written and unwritten) prohibit discrimination based on national origin, citizenship status, or foreign appearance or accent?

Property and Equipment Leasing

Standard leases are often not easily understood and usually have many clauses that can be devastating to an unsuspecting small business. The questions provided in this section should be very helpful in understanding the risks associated with leases, but this is an area where hiring an expert to negotiate on your behalf may save the company many times the cost.

Risk Management Questions for Property and Equipment Leasing

1. If the company is not going to operate from a home or purchase property has the type of space needed for leasing been thoroughly evaluated for business needs such as: highly visible, easily accessible location, sufficient parking, operating hours, signage, noise levels, utilities, taxes, repairs and maintenance, and other liabilities?

2. Is the company prepared to do the due diligence necessary to find the best arrangement for your small business; negotiate any lease requirement that appears to be detrimental to maintaining your business operation; or turn down a bad lease and find a different space with more flexible terms?

3. Has the company determined if the location is zoned properly for your type of business, regardless if a similar type business was operating there before?

4. Has the company determined if the building and the lease space has the electrical capacity, number of outlets, phone capacity, and high-speed computer connections needed for the company to operate efficiently including planned growth.

5. Does the lease state whether any new wiring installed will be kept or removed at the end of the lease and does it specify whether the tenant is responsible for the cost of removal and restoring the premises to original conditions?

6. Has the company calculated the total amount that can be paid for the lease of property?

7. Has the company included in the calculations all expenses that may not be included in the lease, such as: insurance on any property you have in the building, a monitored security alarm system, annual personal property taxes on furniture and equipment, other taxes, utilities, janitorial or maintenance?

8. Does the lease require the company to pay a portion of the taxes or insurance premiums on the facility and can the rent be raised to cover any increases to the building owner?

9. Does the lease include specifically when payments of any type are due, exactly what the late fee will be and what interest rate will be charged?

10. Do the normal operating hours for the building cover the normal operating hours for the company's business or can the operating hours be negotiated?

11. Does the lease specify what services are covered by the lease, the normal hours for the services and specific fees or prices for services during other hours?

12. Does the lease allow for damages to your business, persons, equipment or adjustment to rent if the company cannot operate due to the stopping of services or utilities for whatever reason?

13. Is the company leasing a facility that is under construction or being modified for your operations, and does the lease state the construction schedule, who is paying for the construction, and any penalties for delays (e.g., abatement of rent if delayed completion prevents you from occupying the space)?

14. Has the company determined the types of insurance coverage that will be needed such as, Liability, Property, or Business Interruption, because generally the landlord is not liable for injury or damages except from gross or willful negligence?

15. Has the company taken into consideration reasons for needing to vacate the lease, such as, growth, change in business infrastructure or slow business and lack of cash to pay rent when generally subleases are not allowed or are very restrictive?

16. Does the company have a plan to address the contract clause applying a statutory lien against all contents and proceeds of the leased space that includes taking possession of any or all items located there and selling them to cover any debt owed to the landlord?

17. Does the company have a plan for business continuation should the building have a fire or other disaster, because it will be the landlord's decision whether the building is repaired or your lease is terminated, even if your space suffered no damage?

18. Has the company negotiated for relief from financial obligations if repairs from a fire or other disaster are long term and have a major effect on business operations or will the company have to pay rent even if the space cannot be used?

Utilities/ Telecommunications Description

Utility and telecommunications services are generally assumed to be readily available at all times and the potential for large price increases are not addressed in most business plans. A risk assessment may lead you to different conclusions, particularly when you consider that disruptions occur regularly but are generally limited to a local area, so you may not hear about the effects on affected small businesses. Some of the reasons for problems include: drought, floods, hurricanes, tornadoes, extreme heat or cold, fire, terrorism, price manipulation, or simple supply and demand.

1. Does the company have a plan if the supply of water used for manufacturing or just for employee or customer use is rationed or cut off?

2. Does the company have a plan for the loss of electrical power, rolling outages, brownouts, or contractual shut-off due to demand exceeding supply?

3. Does the company have a plan if the place of business cannot be reached or operated, the company's customers have to leave or cannot be reached, the company's system for shipping product is not possible or system for receiving of raw materials cannot be used?

4. Does the company have a plan if utilities or telecommunications are rationed or prices rise very rapidly due to shortages either real or contrived?

5. Does the company have a plan for security against terrorist attacks on the business site, the computer network or telecommunications systems.

6. Does the company have contracts to protect against price increases or shortages due to supply and demand?

Property and Equipment Leasing Summary Checklist

Leasing Property

- ❑ Have you evaluated business needs which will affect the location of your business?

Before signing lease, have you:

- ❑ Verified that zoning is appropriate for your business?
- ❑ Verified that electrical and telecommunications capacity are adequate, with room to grow.
- ❑ Verified that operating and access hours are acceptable?
- ❑ Determined what janitorial and maintenance services are covered by lease, which have additional fees, and which are tenant responsibilities?
- ❑ Had lease reviewed by attorney, or at least examined lease for hidden clauses and fine print?
- ❑ Have you budgeted for additional expenses associated with commercial office space, such as utilities, insurance, alarm systems, property taxes?
- ❑ Have you determined the optimum lease term for your business?
- ❑ Shorter terms provide more flexibility, while longer terms offer better rates.
- ❑ Inquire about penalties for early termination.
- ❑ Do you have a plan for business continuation, in case fire or other disasters prevent you from using the facility?

Leasing Equipment

- ❑ How long do you plan to keep the equipment?
- ❑ What are the long-term costs of leasing vs. buying?
- ❑ What are the impacts on cash flow?
- ❑ Are there tax advantages to leasing rather than buying equipment?
- ❑ Is there an option to purchase the equipment at the end of the lease? What are the terms?

Utilities and Telecommunications

❑ Do you have a plan to deal with:

❑ Disruptions in the water supply?

❑ Loss of electrical power?

❑ Loss of telephone or other communication services?

Transportation / Logistics

❑ Do you have a plan to handle:

❑ Conditions preventing use of or access to your facility?

❑ Conditions preventing use of normal distribution channels (shipping and receiving)?

Security

❑ Do you have a plan to prevent terrorist/vandal attacks on:

- ❑ Your facility?
- ❑ Computer network?
- ❑ Telecommunications system?

Environmental, Occupational Safety and Health

Environmental and health and safety laws and regulations are a very complex area that affects nearly all small businesses at some level. Decisions are predetermined in many areas about how facilities are built, operated, changed, sold and closed down. This also includes how employees are hired, working conditions, how equipment is purchased, operated, changed, or disposed of. There is little latitude in the language, the compliance and the enforcement of the laws and regulations, yet it is difficult to learn the requirements and to keep up with the new regulations. The good news is that the information gathered through compliance provides the company with better process information than most companies ever collect and can be used to increase productivity and profitability while minimizing risks.

Resource Conservation Recovery Act (RCRA)

1. Has the company determined if any of the major legislative acts covering environmental compliance from Federal agencies, along with laws, rules and regulations from State agencies, City, County and other Local agencies apply to the companies operations?

2. Has the company determined if your facility is a generator of hazardous waste and if so does the company have a U.S. EPA and/or a State hazardous waste generator identification number?

3. Has the company developed documentation on the amount and kinds of hazardous waste that are generated and on how it was determined that they are hazardous?

4. Does the company ship wastes off site and if so are copies of completed manifests used to ship your hazardous wastes over the past 3 years available and have the designated TSDF and transporter signed them? If the company has not received the signed return copy of the manifest from the TSDF, has an exception report been filed?

5. Is your hazardous waste stored in proper containers or tanks that are properly labeled, dated and marked and is the company in compliance with storage and handling requirements?

6. Does the company have a written, posted Contingency Plan, with a designated emergency coordinator, posted emergency telephone numbers and the location of emergency equipment?

7. Does the company regularly train employees so they are thoroughly familiar with proper waste handling and emergency procedures?

Emergency Planning And Community Right-To-Know Act (EPCRA) (also SARA Title III)

1. Does the company have any of the listed extremely hazardous chemicals of a reportable quantity (RQ) equal to or greater than the established threshold planning quantity (TPQ), if yes then the company is required to notify the state regulatory agency and the Local Emergency Planning Commission (LEPC) that the company is subject to the provisions of EPCRA?

2. Does the company use any listed toxic chemical in processing, manufacturing, or otherwise in amounts that exceed threshold quantities, if yes then the company must report emissions of such chemicals on an annual basis using Toxic Chemical Release Forms (Form R) as required in Section 313 of EPCRA?

3. Does the company know and have a plan for the community's right-to-know and have access to information, under SARA Title III, of the company having hazardous chemicals, what chemicals, the quantity of the chemicals and releases of any of those chemicals into the environment?

4. Is the company required to have any Material Safety Data Sheets (MSDS) under OSHA, 29 CFR 1910.1200? If yes, then the company should submit to the SERC, LEPC and local fire department (LFD), a hazardous chemical inventory form (Tier I or Tier II), the Tier I must be submitted by March 1 each year, but if requested a more detailed Tier II must be submitted, or the Tier II can be submitted instead of the Tier I originally.

5. Does the company fall within SIC Codes 20-39, manufacture, process or use any listed toxic chemical in excess of its threshold reporting quantity during the calendar year, have 10 or more full-time employees, and use more than 10,000 lbs of any of the 300 toxic chemicals listed in 40 CFR 372.65(a)? If yes, then a Form R report must be made by July 1st of each year showing the quantity of each chemical released to the environment either routinely or by accident for the previous year.

6. Does the company know if it falls within SIC codes 20 - 39, manufactures, imports or processes a listed toxic chemical which is sold or distributed in a mixture or trade name product containing the listed chemical which requires very specific notices or notifications to be provided as found in Section 313 of EPCRA?

Clean Water Act

1. Does the company fall under regulations for any part of the Clean Water Act such as a National Pollutant Discharge Elimination System (NPDES) permit for discharging directly to any surface waters, or a Pre-Treatment Permit from the local regulatory agency for discharges of wastewater to a municipal sewer system for treatment at a publicly owned treatment works (POTW)?

2. Does the company fall under any of the regulations for discharging or planning to discharge storm water that is associated with industrial activity and requires one of the following types of NPDES storm water permits: individual permit; permit through group application; general permit, as indicated in 40 CFR 122.26(c)?

Clean Air Act Amendments of 1990

1. Does the company need to apply to State or Local agencies for a Title V operating permit?

2. Has the company developed a Chemical Accidental Release Prevention Program for any regulated substances on site that exceed the specified threshold quantities for the Accidental Release Prevention Program as specified in 40 CFR 68.30?

3. Does the company have a Continuous Emission Monitoring System, maintain operating records, and records of startup, shutdown, and any malfunctioning of the facility's air pollution control equipment? If yes, is written notification reporting excess emissions submitted by the 30th day of the end of each calendar quarter?

4. Is the company required to meet maximum achievable control technology (MACT) for any Hazardous Air Pollutants (HAP) as listed in 40 CFR 63, along with the required reporting, monitoring and record keeping?

Occupational Safety and Health Act

Occupational Safety & Health Act regulates nearly all aspects of workplace safety and health and health, including ergonomics, materials handling, protective wear, safety equipment, etc. The law applies to all businesses (except mining, nuclear energy, and certain types of transportation), regardless of number of employees.

1. Is the company and are the employees covered by OSHA regulations that include: general industry, construction, agriculture, and maritime or are exempt due to self-employed (no employees), immediate members of farming families that do not employ outside workers, employees

whose working conditions are regulated by other federal agencies (e.g., mine workers, some truckers and rail workers, atomic energy workers), a religious organization, or domestic help?

2. Does the company have all materials OSHA requires be posted at the workplace and are they properly located?

3. If the company has more than 10 employees are required injury and illness records being maintained (OSHA 300 Log and Form 300A)?

4. Does the company have a written Safety Plan that provides an effective safety and health program?

5. Does the Safety Plan include a written Hazard Communication Plan, dealing with MSDSs, labeling, and employee training?

6. Does the company's employee training program meet the requirements of the OSHA Hazard Communication Standard?

7. Has the company done a hazard assessment to identify any conditions that may cause injury or illness and either identified these conditions be abated through engineering, work practice, or administrative controls? Are there remaining hazards that require the use of personal protective equipment (generally to protect the head-including face and eyes, torso, arms, hands, and feet)?

8. Has the company determined whether hazardous or toxic substances (defined as “capable of causing harm”) are present in the workplace, have the substances stored

and labeled properly, and made Material Safety Data Sheets (MSDSs) readily available in employees' work areas?

9. Does the company assure that all machine guards are in place to protect operators and other employees from hazardous mechanical motion or action, routinely inspect the condition of machines and guards, and provide training to employees in proper use of machines, including guards with an enforced policy prohibiting the removal or circumventing of guards while operating machinery?

10. Are all tools, equipment, and appliances grounded, including all extension cords, which are also free of splices or taps and are not used as substitute for fixed wiring or run through holes in walls, ceilings, or floors?

11. Does the company have a lockout/tagout program including a written energy control procedure with employee training, regular inspections, locks used capable of being locked out, and all locks and tags meet safety standards?

12. Are the company's floors kept dry, aisles and passageways kept clear and free from hazards, all floor and wall openings properly guarded, stairways properly constructed and guarded, elevated storage and work areas properly guarded with permanent means of access and egress, and all ladders undamaged, not poorly repaired, and used according to regulations?

13. Does the company have a written emergency action plan that is made available to all employees, including periodic fire drills, and are all exits clearly marked and unobstructed?

Drug-Free Workplace

1. Does the company have a posted, written Drug-Free Workplace policy that includes employee training, mandatory and random drug testing, an employee assistance program, and supervisor training?

2. Has the company had all employees sign a statement that they understand the Drug-Free Workplace policy, does the company enforce the policy consistently and maintain employee confidentiality?

Environment, Occupational Safety and Health Summary Checklist

RCRA

- ❑ Does your facility generate hazardous waste? (If no, skip to next section.)
- ❑ For each waste stream, document how you determined whether or not it is hazardous.
- ❑ What is your generator status?
- ❑ Determine if large, small, or conditionally exempt small quantity generator.
- ❑ Determine if you need an EPA or State hazardous waste generator ID.
- ❑ Are you storing hazardous wastes properly?
- ❑ Containers are compatible with wastes stored.
- ❑ Containers are properly labeled, sealed, and secured.
- ❑ Wastes are stored in compliance with limits on length of time and amount that can be stored.
- ❑ Are you properly disposing of hazardous wastes, and maintaining required documentation?
- ❑ Use State or EPA-registered transporter and disposal facility.

- ❑ For each shipment, ensure you receive final copy of waste manifest from disposal facility.
- ❑ Keep copies of manifests on file for at least three years.
- ❑ Do you have a contingency plan?
- ❑ Is the plan posted in visible and accessible locations?
- ❑ Does the contingency plan include spill prevention and clean-up procedures?
- ❑ Does the plan contain emergency coordinator contact information, emergency phone numbers, and location of emergency equipment?
- ❑ Do you conduct regular training of employees on waste handling, emergency procedures and other contingencies?

EPCRA and SARA Title III

- ❑ Is your facility is subject to EPCRA?
- ❑ Do you have extremely hazardous substances (EHSs) exceeding the threshold planning quantity (TPQ)?
- ❑ If yes, have you notified the state agency and the Local Emergency Planning Commission (LEPC)?
- ❑ Do you use listed toxic chemicals in amounts that exceed threshold quantities?
- ❑ Do you have reportable quantities of hazardous chemicals?
- ❑ If yes, chemical inventory forms (Tier I or Tier II) must be submitted to the State Emergency Response Committee, Local Emergency Planning Committee, and local fire department annually.
- ❑ Are you required to file the Toxic Chemical Release Form (Form R)?
- ❑ Is your SIC code between 20 and 39?
- ❑ Do any listed toxic chemicals meet or exceed threshold reporting quantities during the calendar year?
- ❑ Do you have 10 or more full-time employees?
- ❑ Do you use more than 10,000 lbs of any of the 300 toxic chemicals listed in 40 CFR 372.65(a)?

- ❑ If yes to all four questions above, you must file the Toxic Chemical Release Form R annually.

Clean Water Act

- ❑ Do you discharge industrial wastewater to a municipal sanitary sewer system?
- ❑ If yes, you must comply with the prohibited discharge standards listed in 40 CFR 403.5.
- ❑ Check with local wastewater treatment facility (usually publicly owned treatment works or POTW) to determine if there are applicable local limits.
- ❑ Is your industry included in the list of categorical industrial users (CIUs) found in 40 CFR 403.12 or a significant industrial user (SIU) as defined in 40 CFR 403.3 (t)?
- ❑ If yes, you must comply with the Categorical Pretreatment Standards.
- ❑ Are you required to have a storm water discharge permit?
- ❑ Does your facility discharge storm water associated with industrial activity, material handling or storage?
- ❑ Are you the operator or owner of a construction site that disturbs one or more acres, or is part of a common plan of development that will disturb one or more acres?
- ❑ If yes to either question, you must develop and implement a storm water pollution prevention plan (SWPPP) and apply for the appropriate storm water discharge permit.

Clean Air Act

- ❑ Does your facility emit air pollutants?
- ❑ If yes, most large sources and some smaller sources are required to obtain a Title V operating permit.
- ❑ If your facility emits Hazardous Air Pollutants (HAPs) you may be required to meet Maximum Achievable Control Technology (MACT). See 40 CFR 63.
- ❑ Do you have regulated substances that exceed the threshold planning quantities specified in 40 CFR 68.30?

❑ If yes, you are required to develop and implement a Chemical Accidental Release Prevention Program (CARPP).

Intellectual Property

Intellectual property includes patents, trademarks, copyrights, databases, industrial designs, formulas and processes, trade secrets and certain other non-tangible assets of a business. In an increasingly information-based economy, intellectual property can one of the most valuable assets of a business.

Your intellectual property may also include what you know about others – information that is deemed confidential either by contract or statute. Possessing such information involves responsibilities (and associated risks) in how you use, protect and disclose it.

Like other assets, intellectual property introduces certain risks into a business environment and must be considered in your risk assessment. These include the risk that others will unlawfully or dishonestly infringe your rights, thereby diluting their value. Conversely, you may – knowingly or not – infringe the rights of others, thereby exposing your business to the risk of legal liability.

Risk Assessment Questions for Intellectual Property

1. Do you know whether your intellectual property needs to be protected by a patent, trademark, copyright, and/or trade secret?

2. A patent gives an inventor the right to keep others from making, using, selling, or importing the invention for a fixed period of time. Inventors are required to disclose their technologies in the patent application.

3. Do you know the application and the technology becomes public information after the patent issues?

4. Do you know that when a patent does not issue within 18 months of the filing date, the pending application becomes public information?

5. Will you be filing the patent application yourself to save money on a complex and expensive process?

6. Do you know that a draft claim describing a product exactly as it exists may result in a narrow claim that might provide only limited protection?

7. Do you know other inventors may be able to make relatively minor modifications to your invention and not be guilty of infringement?

8. Do you know a competent patent attorney may draft broader claims, covering other embodiments of the invention's technology and gain greater protection?

9. Have you described your invention in a printed publication, used the invention publicly, or placed it on sale? If so, do you know you have one year in which to file your patent application and if you do not file within a year, the invention can no longer be patented?

10. Do you have a nondisclosure (or confidentiality) agreement that potential investors or licensees must sign?

11. Are you considering filing a Disclosure Document with the U.S. Patent Office ($10.00 fee) to document the date

of conception of your idea? Do you know this will not give you any patent rights?

12. Are you considering filing a Provisional Patent Application with the U.S. Patent Office ($75.00 fee for small entities)? This will provide a simpler, lower cost patent application that obtains "patent pending" status for one year.

13. Are you considering using an invention promotion firm? Have you done due diligence to be sure the firm doesn't make their money from the inventor instead of the invention? Have you checked with the Federal Trade Commission for scams said to be common?

14. Registration is a recommended first step in the patent process, but it provides no patent protection and inventors can register their idea directly with the Patent Office for a fee of only $10.00.

15. Have you conducted a patent search before attempting to commercialize your invention and to avoid infringing on an existing patent and becoming the target of a lawsuit?

16. Do you know how many years the patent is in effect and when you have to pay maintenance fees to keep it from expiring?

17. Are you prepared to defend your patent against infringement, both legally and financially?

Trade Secrets

1. Has the company determined if the product or process is better protected as a Trade Secret or by filing a Patent?

2. Has the company determined if the product or service is or similar to the areas that seem to be best served by use of the Trade Secret laws, such as, recipes, cosmetics, chemical formulations, customer lists, cost and price information, and marketing and business plans?

3. Has the company determined if the product or process can be used so that the details are not available to employees, customers, suppliers or competitors?

4. Has it been determined if the product or process would be difficult to reverse engineer?

5. Is it likely for the product or process to be developed independently?

6. Has the company determined if there are sufficient resources to enforce a patent?

7. Has the company taken into consideration that a trade secret can only be used for one year, then the right to obtain a patent is lost?

8. Does the company or owner have a plan that includes "reasonable precautions" to protect the secrecy of the product or process?

9. Does the company have employees sign a confidentiality agreement that requires them to not divulge any company trade secrets?

10. Does the company have a process or procedure that grants access to all or part of any company trade secret information only on a "need to know" basis?

Trademarks

1. Has the company decided whether it wants its trademarks or service marks to be registered at the state and/or federal level, or not registered at all?

2. Does the company name, logo, or phrase that identifies the companies products or services include the TM or SM symbols that serve as notification that a claim to ownership is made whether registered or not?

3. Does the company have adequate backup information dating the first time a Trademark or Service Mark was used in commerce?

4. Has the company determined if it will operate in a limited geographic area and only need protection in that area? Does the company believe it may expand at some point and need to protect a Trademark or Service Mark statewide or nationwide, because registration will provide exclusive rights within the state or nationally?

5. Does the company have a system in place to file an affidavit of use during the sixth year and then file affidavits every 10 years afterward, because the trademark owner must keep track of the required filing dates?

6. Has the company or owner done a thorough search to identify other companies that may be using the name or mark that the business plans to use? Did the search include the Federal website www.uspto.gov; a Patent and Trademark Depository Library; the State government; the

local government office in the area where the company is located; other common law sources such as phone directories, industrial directories; Internet websites or product guides; as well as alternate spelling and common misspellings?

7. Has the company determined whether the value of the Trademark or Service Mark or the cost to change it justifies the cost of hiring an attorney to do a professional search?

Copyright

1. Does the company or owner have authorship of ”original works” that are expressed in a tangible form, fitting into any of the following 8 categories: Literary works; Musical works; Dramatic works; Pantomimes and choreographic works; Pictorial, graphic, and sculptural works; Motion pictures and other audiovisual works; Sound recordings; Architectural works?

2. If the original work is a literary work does it contain original or creatively new information to be copyrighted or is it the expression or presentation of an idea or concept containing information that is common property that is being copyrighted?

3. Has the company or owner filed for copyright registration, although created work is automatically covered by copyright protection, registration provides additional legal rights and registration is required before enforcement can proceed?

4. Is the company or owner using the copyright notice, ©, plus the date created and the authors name whether reg-

istered or not to inform the public and avoid claims of not knowing about the copyright?

5. If the creation is a design has the company or owner determined if a Design Patent would be the proper choice instead of copyright?

6. Is the company or owner using known copyrighted materials or materials found to be copyrighted from research through the copyright office in Washington D.C. or using their web-site www.copyright.gov.?

7. Is the company or owner using copyrighted materials that qualifies through the "fair use" part of copyright law, including commentary, criticism, news reporting, education, scholarship or research?

8. Can the company or owner clearly determine if the use qualifies, determined by the type of work being copied, the amount of work copied and the impact on the commercial value of the work copied?

9. Has the company or owner consulted with an attorney and received an opinion of qualifying as "fair use"?

10. Has the company or owner received written permission from the copyright holder to use the material, which is the safest way to avoid doing anything illegal?

Intellectual Property Summary Checklist

Patents

- ❑ Do you have an innovative product or process that you would like to protect?
- ❑ Conduct preliminary patent search at www.uspto.gov

- ❑ File Disclosure Document with U.S. PTO.
- ❑ Obtain legal opinion; professional patent search.
- ❑ Evaluate cost/benefits of using patent attorney vs. filing yourself.
- ❑ Evaluate option of protecting as trade secret.
- ❑ Determine if you wish to file and whether to file provisional or non-provisional.
- ❑ Remember to work within legal time constraints.
- ❑ Must file patent application within one year of making public disclosure.
- ❑ If filing provisional application, non-provisional application should be filed within one year of provisional filing date.

Trade Secret

- ❑ Does your company have information that is not generally known and gives the company a competitive advantage?
- ❑ Evaluate likelihood of independent development or reverse engineering by competitor.
- ❑ If applicable, evaluate option of filing patent application.
- ❑ Identify and implement reasonable precautions to keep secret.

Trademarks

- ❑ Does your company have a distinctive name, logo, or slogan that identifies your products or services?
- ❑ Search for conflicting marks (registered trademarks and commercial use).
- ❑ Determine if you want to register at state or federal level.
- ❑ Determine if legal counsel needed.
- ❑ Complete and submit application.
- ❑ Use TM or SM symbol in conjunction with the mark.
- ❑ Upon registration, implement system to file affidavits of use at required intervals.

Copyright

- ❑ Do you have ownership of original works covered by copyright law?
- ❑ Determine applicable form based on category of the work.
- ❑ Submit application, along with required deposits.
- ❑ Are you using copyrighted works in your business?
- ❑ If unsure, have you researched the copyright status of the work at http://www.copyright.gov/records/ ?
- ❑ If yes, do you have permission from the copyright owner?
- ❑ If claiming "fair use", do you have a written legal opinion to support your claim?

International Trade

If your company engages in international trade, you should be aware of the special risks involved. These include the risk of nonpayment by a customer, breach of contract, misuse of trade secrets and other intellectual property, and the risk of loss or damage to goods in transit. While all of these risks exist with respect to domestic commerce, the risks are greater when the other party is overseas, often unknown by you and beyond the reach of the U.S. legal system.

1. Does your company have a process for due diligence to determine credit risk for a new customer?

2. Does the company use multiple sources to gather credit information?

3. Does the company follow up on all references? (trade references, credit references or other referrals)

4. Does the company understand the use of an Irrevocable Letter of Credit (LC)?

5. Does the company know how to use a promissory note instead of a letter of credit when a LC is no acceptable?

6. Does the company know the risks associated with using a promissory note?

7. Does the company know that promissory note structure can be different for different regions and even local laws can affect compliance standards?

8. Does the company have a process to receive payment in local currency instead of U.S. dollars?

9. Does the company know how to set up payment to be based on the U.S. dollar amount quoted regardless of local devaluation?

10. Does the company know how to use a Forward Option contract?

11. Does the company have a process to determine most streamlined payment route, including an agreement that specifies the “Negotiating” and “Paying” bank or the “Confirming” bank?

12. Does the company have a process that requires extra due diligence depending on the specific world market?

13. Does the company understand and have the ability to use paperless transactions?

14. Does the company understand and use Discretionary Credit Limit (DCL) Insurance?

International Trade Summary Checklist

Credit Risk

- ❑ Do you use multiple sources to assess credit risk of new customers? Common sources include:
  - ❑ Financial Reports (e.g., Graydon, Veritas)
  - ❑ Private and Eximbank credit insurers
  - ❑ U.S. company trade references
  - ❑ Banks and accounting houses
  - ❑ Foreign Commercial Service of U.S. Department of Commerce
- ❑ Do you involve sales and finance personnel with determining risk assessment and credit terms?
- ❑ Do you understand the difference (and risk implications) between letters of credit and promissory notes?.
- ❑ Do you recognize the effect of culture when trying to obtain credit information and/or assurance of payment?
- ❑ Do you ensure promissory notes are structured in compliance with local laws?

Form of Payment

- ❑ Have you implemented a process to accept local currency?
- ❑ Stabilize price by requiring payment equal to U.S. Dollar price quoted or by using forward option contract.
- ❑ Do you understand the meaning and implications of the terms “negotiating”, “paying”, and “confirming” bank? Are terms are used correctly in all written documents?
- ❑ Are you aware of cultural and/or political situations which contribute to discrepancies? Have you implemented a process to ensure additional due diligence in these situations?
- ❑ Have you evaluated the advantages and disadvantages of electronic transactions?

Insuring Payment

- ❑ Have you verified that a customer has good credit and payment history before relying on Discretionary Credit Limit (DCL) insurance?
- ❑ Be aware that even good customers can come upon hard times.
- ❑ Understand that shipping to a customer who is behind on payments will invalidate insurance.
- ❑ Consider Eximbank's Special Buyer Credit Limit (SBCL).

Buying an Established Business

When you purchase an established business or franchise, you not only obtain the assets of the company, but you may also inherit risks and liabilities – issues that must be carefully researched and verified before consummating a deal.

1. If you are considering buying an existing business, have you determined your motivation compared to starting a company?

2. Have you determined the seller's real motivation for selling the business?

3. Do you have a process for you and the seller to establish "fair market value"?

4. Do you have access to hard-core or audited financials?

5. Do you have an agreement to have access to employee retention, management skills, geographic market penetration, product lines, new product potential, current technology, environmental compliance history, and management systems that have been implemented?

6. Do you have a plan that you can follow for due diligence through to final offer?

7. Have you made and attached a list of contingencies that could affect the purchase or operation of the business?

8. Will the cash flow allow the buyer to service the debt and earn a reasonable salary?

Buying an Established Business Summary Checklist

Making the Decision

❑ Have you identified your real reasons for wanting to buy the business?

❑ Have you attempted to discover the seller's true motivations for selling?

❑ Have you researched the history and current status of business, and trends which may impact future profitability?

❑ Have you established "fair market value" based on financial, management, and operational aspects? These aspects include:

  - ❑ Employee retention
  - ❑ Management skills and systems
  - ❑ Geographic market penetration
  - ❑ Product lines and new product potential
  - ❑ Current technology
  - ❑ Environmental compliance history

❑ Have you attempted to verify financial information given by the seller?

❑ Review financial statements, tax returns.

❑ Review past several months of cash flow analyses.

❑ Can you service the debt and earn a reasonable salary from current cash flow?

The Contract

- ❑ Are all terms of the agreement in writing?
- ❑ Clarify any discrepancies between what was stated or implied and what is written.
- ❑ Have you identified and documented handling of relevant contingencies? These may include:
  - ❑ Inventory
  - ❑ Books and records
  - ❑ Covenant not to compete
  - ❑ Existing leases and financial obligations
  - ❑ Training period
  - ❑ Accounts receivable
- ❑ Has your attorney reviewed and approved the contract?

Buying a Franchise

1. Do you understand the real risks associated with owning and operating a franchise?

2. Do you know what is and do you know if you have the type of personality that is common for the owner/operator of a franchise?

3. Can you afford to risk the large investment required up front with no guarantee of success?

4. Do you have a market analysis plan to determine demand for the product or service the franchise will offer?

5. Do you have a market analysis plan to determine how to best reach potential customers and best potential location for the business?

6. Do you have access to an “Industry Analysis” that provides a real evaluation of the business opportunity?

7. Do you have or will you be receiving the "Uniform Franchise Offering Circular (UFOC); the Franchise Agreement and the property and/or building lease?

8. Does the company have an employee training manual that covers compensation, regular progress discussions, safety policies, training, career path and worker's compensation?

9. Does the business have a customer liability plan that covers on-premises accidents, other medical, errors and omissions, auto liability and medical and financial losses incurred by the customer?

10. Does the company have a plan for using financial information, including paying taxes, record keeping, income statements, balance sheets, profit and loss statements, monthly cash flow projections, monthly sales projections and a conservative budget determined by the cash flow and sales projections?

11. Do you establish personal relationships well?

12. Do you like and get along with the franchisor so you can benefit from the franchisor's assistance and knowledge?

13. Will you be able to determine which franchisees are doing well and are following a plan that is acceptable to you, so you can benefit from their assistance and knowledge?

14. Will you thrive in a system where you need to work well with others, try to always improve the organization within the system and communicate effectively?

Buying a Franchise Summary Checklist

Franchise Basics

- ❑ Is your personality compatible with franchising? You must be able and willing to work within the system set by the franchisor.
- ❑ Can you afford a large up-front investment and ongoing costs including: franchise fee, advertising fees, inventory, royalties, and building and equipment?
- ❑ Do you understand the risks involved, and the effect of site-specific factors such as demographics and overhead costs?

Making the Decision

- ❑ Have you reviewed industry analyses and demographic information to project future demand, select the best location, and determine how to reach potential customers?
- ❑ Have you reviewed legal documents, including the Uniform Franchise Offering Circular (UFOC), Franchise Agreement, insurance coverage, and building lease agreement?
- ❑ Have you reviewed employee training manuals?

The Contract

- ❑ Are all terms of the agreement in writing?
- ❑ Clarify any discrepancies between what was stated or implied and what is written.
- ❑ Have you identified and documented handling of relevant contingencies? These may include:
  - ❑ Inventory
  - ❑ Books and records
  - ❑ Covenant not to compete
  - ❑ Leases and financial obligations
  - ❑ Training period
  - ❑ Accounts receivable
- ❑ Has your attorney reviewed and approved the contract?

Chapter III
Basic Types of Insurance

Almost every aspect of your business involves risk. Some of these risks can be eliminated or mitigated with proper management and contingency planning, as outlined in the risk assessment process in the preceding section.

Other risks, however, cannot be effectively managed away because there are too many factors outside your immediate control. Two examples of such risks are damage caused by natural disasters and liability lawsuits brought by those who claim your actions have harmed them. In such cases, your best option may be to transfer the risk to a third party by purchasing insurance. Even when there are risk factors partially or wholly within your control, you may find that insurance is the most cost-effective and practical way to manage the risk.

The two broad categories of insurance are liability insurance and property insurance. Liability insurance protects you from third-party claims against you and your business. Property insurance covers loss or damage to your property. In addition to liability and property, there are many other specialized types of business insurance, including workers compensation, employee health, fidelity, crisis response, auto and many others.

Standard Liability Insurance

Standard or general liability insurance protects you from claims made by third parties for bodily injury or property damage caused by you, your employees, your facilities, your business practices or your products. These “third parties” can be anyone: customers, vendors, competitors – even complete strangers who believe they have suffered injury as a result of you conducting your business.

Liability insurance covers you against claims from well-known risks such as a customer slipping on your sidewalk. But the universe of unknown risks is limitless; fluke accidents and unusual coincidences can expose you to claims from unexpected sources. Even if the claims are not valid, they are costly to defend. Standard liability insurance is one policy every business, regardless of industry or size, should have.

Excess Liability

Also known as umbrella liability, excess liability insurance provides a greater amount of coverage in the event of a truly catastrophic occurrence that would exhaust the limits of a general liability policy.

Professional Liability

While policies vary, standard liability insurance typically covers claims arising from bodily injury or property damage, and may not cover other types of liability. Depending on your industry, you may also need professional and management liability coverage.

Professional liability insurance covers claims arising from a variety of sources:

- Professional malpractice
- Errors and omissions
- Defamation or libel
- Breach of duty
- Infringement of privacy
- Infringement of intellectual property

Professional liability insurance is commonly carried by medical practitioners, attorneys, accountants, architects, and other professionals whose expertise, judgement and actions are relied upon by customers. Professionals in other industries may face similar exposure to professional liability without realizing it. Advertising agencies, public relations firms, business consultants, financial planners, real estate agents, technology and Internet consultants – indeed, almost any service industry where the customer relies on the judgement and actions of a professional – has a potential professional liability risk, and can benefit from professional liability insurance coverage.

Management Liability

Small business owners, directors and officers are typically involved in the day-to-day management and operation of the small company, and the decisions they make can expose them to liability claims from a variety of sources. What's worse, because of the close involvement in daily operations by owners and executives, both the personal and business assets of these decision makers may be vulnerable in a lawsuit.

The most common liability claims made against the owners and managers of small companies are for employment practices. This includes wrongful termination, discriminatory practices, retaliation, and harassment. Lawsuits may be brought by employees, former employees, and even government agencies, and judgments are potentially large – jury awards in the millions of dollars are increasingly common.

Directors and officers face other risks, too. Customers, competitors, suppliers, shareholders, and government bodies can make liability claims against a small company and its management on a number of grounds:

- Customer harassment
- Private placement securities claims
- Breach of contract
- Breach of fiduciary duty

To adequately protect against these potentially devastating liability claims, small companies should obtain employment practices liability insurance (EPLI) and directors and officers (D&O) liability coverage. Small businesses should recognize the personal risks faced by their directors, officers and executives and make sure that the insurance protects both the business and these key individuals personally.

Of course, insurance coverage is not a substitute for sound management practices that would prevent liability claims in the first place. Even with adequate insurance coverage, a liability claim can be extremely disruptive to a business, consuming countless hours of staff time and potentially damaging employee morale and the company's reputation. When seeking insurance coverage, small companies should investigate what resources the insurer may have available to help management comply with applicable laws and institute policies that may prevent costly lawsuits by employees, shareholders, customers and others.

Fidelity

Every employer is vulnerable to employee crime, and it can be very costly: According to the Association of Certified Fraud Examiners, the average business loses about 6 percent of its total annual revenue to employee fraud.

Employee crime is widespread and can take many forms:

- Theft of cash, inventory or other assets
- Internal fraud, including the creation of fictitious accounts and embezzlement
- Forgery of company checks
- Computer-related fraud and electronic funds transfers
- Vendor fraud in collusion with employees, such as the submission of fake invoices for products never received and overcharges with associated kickbacks to colluding employees.

Because employee crime is often committed by those in positions of trust, it is difficult to detect. As losses mount over time, recovery can be nearly impossible when the crime is finally uncovered, often with disastrous results. Some companies simply cannot survive large losses. In fact, up to one-third of business failures can be tied to an uninsured or underinsured crime or fraud. Public companies may have to restate prior results and face highly disruptive shareholder or regulatory scrutiny.

One solution is fidelity coverage, a type of insurance that protects the business owner against dishonest or criminal acts by employees acting alone or in collusion with vendors, customers or other employees. Some insurers offer fidelity coverage in concert with other resources designed to help companies establish controls that prevent employee fraud or identify it in its early stages. Fidelity coverage, together with a well-designed system of internal controls, can help prevent employee crimes from destroying the reputation and financial viability of your business.

Specialized Liability Coverage

The nature of your business or industry may expose you to certain risks not commonly found in other fields, and because such risks are specific to your business or industry, they might not be covered by general liability policies. The workbook section of this publication can help you identify and manage those risks, and perhaps indicate that you need specialized insurance coverage against them. Fortunately, many insurers offer industry-specific policies, some of them quite specialized.

Here are some industry-specific professional liability policies readily available in the market:

- Internet and technology businesses
- Directors and officers of associations
- Employed lawyers

- Third-party administrators of employee benefits
- Schools and school boards
- Parties providing group recreational activities
- Financial institutions
- Insurance agents
- Investment managers
- Not-for-profit organizations
- Manufacturers, distributors, wholesalers and importers of products
- Businesses that have an impact on the environment

Environmental Liability Coverage

Any business that manufactures, stores, transports or uses hazardous materials in its operations faces an environmental liability risk. An environmental liability usually arises from the improper use, storage or handling of hazardous materials, or from an accidental, improper, or unlawful discharge of such materials into the environment.

Many businesses, especially small businesses, are not properly insured against such risks because they may not be fully aware of their responsibilities. Businesses that you might not normally associate with hazardous materials are at risk: dry cleaners, printing companies, trucking companies, gas stations, agribusinesses, and even small workshops that use limited amounts of paints, solvents, and corrosive substances in the manufacturing and finishing process. Even worse, property owners, under certain circumstances, may be held legally liable for environmental cleanup of a site polluted by previous owners.

Because typical commercial general liability policies exclude protection for pollution-related losses, obtaining proper environmental liability coverage is essential to protect against financial losses associated with damage to the environment, property or the health of individuals. Key factors to consider when selecting the proper coverage include:

- Does the policy cover cleanup costs?
- Does the policy cover both sudden (such as spills) and gradual (such as slow underground leaks) pollution?
- Is coverage for third-party bodily injury and property loss included?
- Is the coverage for a specific location, or does it cover company-wide facilities and activities? Does it cover transportation accidents?
- Are coverage limits adequate for potential losses?

Property Insurance

Property insurance protects your physical assets from loss or damage due to a variety of causes, including wind, fire, accident or criminal activity, and is one of the most important policies any business can own.

"Physical assets" that may be covered by a property insurance policy include buildings and equipment, inventory, fixtures, files and records, office furnishings, and any other asset owned by your business.

Because not all property insurance policies are the same, it is important to check your coverage to make sure you are protected not only from an actual loss, but also the causes and effects of the loss. For example, some policies provide exclusions for losses due to flood or earthquake. While your coverage may also exclude losses from certain acts of domestic terrorism, the Terrorism Risk Insurance Act of 2002 (TRIA), requires property and casualty insurers to offer coverage for certified acts of international terrorism, as determined by the Secretary of the Treasury. Such coverage is automatic unless you authorize in writing the reinstatement of the terrorism exclusion or you do not pay the associated premium. If your policy excludes some risks for which your risk assessment indicates you need coverage, you may need to purchase a named peril policy that covers the specific risk.

One of the most important assets for many businesses is digital information – databases of customers, suppliers, intellectual property, and other information stored electronically. Because this data can be so important to the future operations of your business, you need to ensure that you have an insurance policy that provides coverage for replacement or reconstruction of valuable data and documents.

Liabilities associated with computer networks are increasingly being excluded from standard property and liability policies, leaving businesses exposed to significant risks. Hackers, computer viruses, and network failures can present a variety of liabilities not covered by standard policies:

- Loss or corruption of valuable data
- Loss of business due to a network interruption or denial-of-service attack
- Liability for breach of privacy if sensitive customer information (such as credit card numbers or health records) is stolen in a cyber attack
- Liability for transmission of computer viruses or other malicious code, whether originating internally or as the result of an outside attack

When such liabilities are excluded from your policies, you will need a stand-alone cyber-liability policy. Such policies may cover a range of liabilities and may also include coverage for loss of business and public relations efforts to restore public confidence in your business.

When a calamity strikes, it is often not enough simply to recoup the value of lost assets. You may be incurring other losses – lost business revenue from a temporary halt to your operations, relocation costs, added travel or communications costs, and so on. A property policy with business continuity or business income coverage can prevent a disaster from impairing the ongoing viability of your business. Such a policy may cover items such as a short-term lease of office or retail space, moving expenses, communications with customers or clients, employee salary and benefits during down time, equipment rental, and other immediate expenses needed to minimize the long-term damage to your business.

Package Policies

Package insurance policies combine two or more types of coverage into one policy. For small businesses, this typically takes the form of a Businessowners Policy (BOP), which combines property and general liability coverage.

Businessowners Policies are very popular among small business owners because they provide, in a simplified form, common coverages that almost all businesses need. Some insurers go beyond the basic property and general liability coverage to allow small businesses to add other coverages, such as professional liability, umbrella liability, or employment practices liability.

Employee Benefit Plans

Attracting and retaining a quality workforce is one of the biggest challenges faced by small companies. While pay and working conditions are important, the benefits package you offer can make the difference between a good employee working for you or working for a competitor.

Health Care Plans

One of the most valuable benefits you can offer your employees is the opportunity to participate in a group health plan. Group health coverage provides numerous benefits both to the employee and the employer:

- Employees can participate usually at a much lower cost than an individual health insurance policy
- The employer can pay part or all of the employee's premium, and deduct the cost as a business expense
- Group coverage spreads the insurer's risk, often re-

sulting in lower costs for most participants
- Employees who may not otherwise be able to obtain health coverage due to health conditions will find it easier to obtain coverage through the group plan
- Ready access to quality health care can result in a healthier, more productive work force.

You can provide health benefits in a variety of ways:

- Enrollment in a health maintenance organization (HMO). HMOs are networks of healthcare providers that provide service to patients on a fee basis. Employees pay a nominal fee each time a service is used.
- Group health insurance. Pays for covered services and procedures, usually with the patient responsible for a nominal co-payment and/or deductible.
- Prescription coverage. Prescription coverage is often an add-on to a health plan.
- Self-insurance. With self-insurance, the business commits to paying part or all of an employee's health care costs. Because of the significant risk and administrative burdens, this option is rarely recommended for small or medium businesses.
- Medical savings account. With a medical savings account, employees receive a set amount each year to spend on health care. Any unused amount is retained by the employee. This type of benefit is often used in conjunction with catastrophic coverage, and is designed to give employees an incentive to help keep costs down.
- Catastrophic coverage. This type of insurance comes with a large deductible – up to $2,000 or more – and is designed to protect against the financial burdens of a major illness or injury.
- Accidental death and dismemberment. This policy is usually optional and is paid entirely by participating employees. It provides additional benefits in the event of an accidental death or debilitating injury, and typically covers employees 24 hours a day for accidents occurring on or off the workplace.

If you provide health benefits to your employees, it is important to keep in mind that doing so can expose you to potential liability. Make sure you have adequate liability coverage to insure against these risks.

Life Insurance

Life insurance for employees and owners is not only a valuable benefit, but can also provide certain other benefits to the business.

Group life insurance gives your employees the opportunity to purchase life insurance at group rates, often at significant savings over the cost of individual policies. Participating employees designate who the beneficiary of the policy will be.

Key Man insurance usually covers the owner, top executives and other individuals whose loss would affect the profitability or viability of the business. The business is the beneficiary, and the proceeds are used to ensure the ongoing viability of the firm until the business adjusts to the loss.

Some companies take out life insurance policies on employees (with the company as the beneficiary) for their potential tax benefits. Before engaging in this practice you should seek competent legal and tax advice, and be aware that in some states it is illegal to secure life insurance policies on others without their knowledge.

Retirement Savings Plans

In addition to health insurance, a good retirement savings plan is one of the most valuable benefits you can offer to attract and retain good employees. There are a variety of plans available:

- 401(k)
- 403(b)

- SIMPLE
- Traditional employee pension (defined benefit)
- Simplified Employee Pension (SEP)

Depending on the type of retirement savings plan you offer, you and executives who act as trustees may become fiduciaries with obligations set forth in the Employee Retirement Income Security Act of 1974 (ERISA), as amended. ERISA carefully regulates the actions of individuals responsible for managing and administering retirement savings and benefits on behalf of employees.

Lawsuits relating to retirement fund performance, denial of benefits, plan eligibility and other administrative issues are increasingly common, and fiduciaries may be held personally liable – often for very large sums. ERISA liability insurance is the best way to manage these risks to the company, the retirement plan, and the personal assets of the fiduciaries involved. In fact, many executives will refuse to serve as a retirement fund trustee unless ERISA liability insurance is provided.

Business Travel Accident

When your employees travel on business, they face the risk of accidental injury, disability and death, whether they are making a short trip to the post office or flying around the world making sales calls. Business travel accident insurance is a benefit you can provide to these employees so that they are adequately insured in the event of an accident. Coverage is typically for accidental death and dismemberment, accident medical expenses, paralysis, and emergency medical evacuation. Benefits are paid in addition to workers' compensation or other insurance. Coverage may be extended to include accidents occurring on travel for personal reasons, as well.

Workers' Compensation

Workers compensation insurance provides for the cost of medical care and rehabilitation for employees injured in work-related activities. It also provides for lost wages and death benefits for the dependents of persons killed in work-related accidents. While workers compensation plans vary from state to state, it is required for most employees in most states. Coverage may be obtained from private insurance carriers, and in some states there is a state fund that offers coverage.

Because workers compensation premiums are based in part on the employer's history of claims, you have an added incentive to prevent workplace injuries. Completing the risk assessment worksheets in this publication is a first step in identify risks to your employees. Contact your insurance carrier or state administrator for additional resources to institute a workplace safety and training program.

International Insurance

As global trade grows and borders become less significant, an increasing number of small and medium businesses are parties to international transactions, and may have assets or employees in other countries. International business can take many forms:

- Importing or exporting goods and services
- Establishing foreign subsidiaries, distributors, franchises or partnerships
- Direct investment in a new or existing enterprise
- Cross-border licensing agreements
- Traveling internationally to meet customers and suppliers, conduct research, or attend trade events

Conducting business internationally involves special risks that are often not covered by a domestic general liability or property insurance policy. The following are examples of risks that are unique to or significantly increased in the context of international business:

- Repatriation of assets or employees
- Threats to marine cargo
- War risks
- Financial risks related to foreign employee dishonesty, forgeries, and official corruption
- Kidnapping, ransom, and extortion
- Political risks such as expropriation, nationalization, embargo, contract cancellation, and selective discrimination
- Foreign travel accidents and emergency medical expenses, including emergency medical evacuation
- Credit risk/nonpayment

In addition to these special international risks, there are ordinary risks that your business faces regardless of whether the business activity, employee or asset is at home or abroad. These include risks normally covered domestically by one or more common policies:

- General business liability
- Management liability
- Commercial auto liability
- Workers' compensation
- Employment practices liability
- Property and business interruption

Depending on your domestic policies, coverage may or may not extend to international business dealings and assets. Before engaging in international transactions or sending employees or assets abroad, be certain that you have obtained the necessary coverages. For more information about international risks, and to assess your own exposure, visit http://www.assessyourinternationalrisk.org.

Chapter IV Risk Management Service Providers

As a business owner, you are in the best position to assess the risks your business faces and determine the best way to eliminate, mitigate, or transfer those risks. If yours is a small business, you can perform much of the work yourself, such as establishing company safety policies and eliminating or modifying especially risky activities or processes.

But much of risk management involves the help of outside service providers – insurers, brokers, and risk management consultants. This section summarizes the roles of these important providers and describes how they can help your business effectively manage your risks.

Types of Insurers

The quality of your insurance is only as good as the quality of your insurer, so it is important to choose insurers that meet the needs of your business.

Insurance companies are licensed and regulated by the states and include local, regional, national and international firms. Keep in mind that insurers that operate regionally or nationally may not be able to offer all coverages in your state.

Insurers are distinguished not only by geographic area, but also in the types of insurance they offer. You might find that using more than one insurer is the best way to meet your needs. For example, some insurers specialize in life, health, or auto insurance. They may offer other types of coverage, but their offerings might not provide adequate coverage for your needs, or may not be specific to your industry.

Consumer-focused Insurers

Many insurers focus on the needs of individual consumers or sole proprietors, offering basic general liability, property, health, auto and/or life insurance. Coverage is easily obtainable and widely available, but can be limited in scope. For example, an insurer may be very competitive in providing general liability insurance, but might not offer product liability or workers' compensation insurance. These insurers often have coverage limits that are too low for the potential liabilities faced by small or medium businesses. However, if your risk assessment indicates that the coverages provided by such an insurer are adequate for your needs, you may find the rates and availability to be the best solution for your business.

Business-focused Insurers

Insurers that specialize in business coverage may be national, regional or local in scope, but all offer an important benefit – the range of coverage offered. If your business requires specialized insurance, such as pollution liability, product liability, or errors & omissions coverage, you are more likely to find the right coverage from an insurer that focuses on the business market.

Some business-focused insurers offer industry-specific policies that combine multiple coverages into a single package. For example, if your company conducts business internationally, you can find a policy that covers a wide range of international exposures in one package. Business-focused insurers are also more likely to offer higher coverage limits, tailor a policy to the specific needs of your business, and be willing to underwrite risks outside the scope of coverage offered by a consumer-focused insurer.

Because business-focused insurers often underwrite greater or more complex risks, they may offer additional services to help you mitigate the risk. In other words, they benefit themselves by helping you reduce the likelihood of claims. For example, an insurer underwriting fidelity coverage may provide information and resources to help you establish internal controls to prevent or detect employee crime.

Specialized Insurers

Specialized insurers focus on providing competitive rates and service in a particular market segment. Health insurance and life insurance are two common examples, but there are companies that focus on other areas as well, such as vision care, legal insurance, accidental death and dismemberment, and agricultural insurance, to name a few.

With so many options, it is not surprising that many businesses have policies with more than one insurer. You may have auto insurance with one carrier, and general liability with another. Here are a few important considerations when selecting the right insurer(s) for your business:

- Does the insurer offer the right coverage for your business, with limits high enough to cover your potential liabilities?
- Is the insurer financially sound? If your insurer becomes insolvent, your ability to recover under your policy may be limited to Insurance Guaranty Fund protection. For property and casualty coverages, this is limited to $300,000 in most states, regardless of the limits of liability you purchased. You can check the financial soundness of an insurer by obtaining reports from the major insurance rating companies – AM Best, Fitch Ratings, Moody’s, or Standard & Poor’s.
- Are the rates competitive?
- Is the claims process quick, efficient, and customer-friendly?

Types of Insurance Representatives

Although some consumer-focused insurers sell directly to the customer, most insurers sell their policies through a network of agents or brokers who not only sell the policies, but service them as well.

Insurance Agents

Insurance agents work for one or more insurance companies to sell and service policies. They are compensated by the insurance companies based in whole or in part on the amount of premiums generated by the policies they sell.

An *independent agent* sells policies for more than one insurance company, whereas a *captive agent* sells only for one particular company.

Insurance Brokers

Insurance brokers typically represent a variety of insurance carriers and are compensated by the insurers, but they work for the customer by comparing policies among the insurers and helping the customer select the policy that best meets the customer's needs.

So, to whom do you go for your business insurance needs? It depends on how much effort you are willing to put into finding the right insurance solution. As stated previously, you the business owner are in the best position to understand the risks you face. Before visiting an agent or broker, you might want to do some research on your own to find one or more insurance companies that offer the specific types of coverage you need. You can talk with other business owners about their experience or contact your local or national business association or chamber to see which carriers are active in your industry. Then find an agent or broker representing that carrier or carriers in your area.

Risk Management Consultants

A popular business trend is outsourcing non-core functions such as payroll processing, benefits administration, and information systems. A major benefit of outsourcing is that it allows you to focus on what you do best to add value for the customer while minimizing costs. But another benefit is that you are transferring some portion of the risk associated with the activity to the service provider. You are minimizing your own risks by employing outside professionals who are in a better position to recognize and deal with the risks. You might not think of your tax attorney or exterminator as a risk consultant, but that is one benefit they provide – helping you manage your risks.

When viewed in this way, the universe of risk consultants is vast, but there are certain providers to consult when managing risk is – or should be – a primary consideration.

Attorneys and Tax Professionals

You should always consult an attorney and/or a Certified Public Accountant when starting a business. These professionals can help you structure your business in such a way as to minimize your exposure to personal liability and tax risks. They can also be helpful as you write your business plan to identify potential legal or accounting risks before they become problematic.

Attorneys should also be consulted whenever you sign a contract or lease, or if you are involved in a situation that could eventually involve litigation. Many companies also consult attorneys to review advertising materials, intellectual property issues (such as patents and trademarks), and employee benefits programs to minimize the risk of liability.

Marketing and Economic Consultants

Advertising agencies, marketing consultants, and economic research firms can help you assess the market before you make major investments. Through economic analysis, focus testing, and market testing, these professionals help you manage perhaps the biggest business risk – that there is not a profitable demand for your product or service.

Financial and Credit Risk Consultants

Many firms with the words "risk management" in their names are financial consultants specializing in managing risks related to investments in securities, derivatives, futures contracts, and other complex financial instruments. These companies can help you manage foreign exchange risks when conducting business internationally, or the risks associated with fluctuations in market prices for commodities.

Credit reporting agencies can help you manage risks associated with extending credit to customers. Firms such as Dun & Bradstreet, Experian, Equifax, and TransUnion maintain credit reports on businesses and consumers that you can purchase. Based on the information in the report, you can decide – based on facts – whether the prospective customer represents an acceptable credit risk to you.

Specialty Consultants

Regardless of your industry, you can find consultants or service providers to help you manage your risks. Some examples of these include:

- Occupational safety and health consultants to help you establish a safety program and design an ergonomically sound work environment
- Lease consultants to help you negotiate property and equipment leases
- Human resources management consultants to help you establish employee policies that comply with applicable laws and provide key benefits while minimizing your liability risks
- Transportation and logistics consultants to keep your supply chain running efficiently and preventing costly delays

- Hazardous materials handlers to transport and dispose of hazardous materials and pollutants
- Technology consultants to ensure that your systems run smoothly and securely, with appropriate redundancy, and with data backup and storage protocols
- Security professionals to ensure that your workplace is safe for your employees and customers, and to protect your assets from criminal activity

And finally, your insurance carrier or agent can be an extremely valuable source of advice and assistance in identifying and managing all types of risks, including suggesting appropriate coverages to make sure that you are adequately insured for the risks you face.

Chapter V
Next-Step Resources

Key Emergency Phone Numbers

Auto Safety Hotline .... (800) 424-9393
Centers for Disease Control
International Travelers' Hotline .... (404) 332-4559
Consumer Product Safety Commission
Product Safety Hotline .... (800) 638-2772
Environmental Protection Agency .... (202) 260-2090
Federal Bureau of Investigation .... (202) 324-3000
Federal Emergency Management Agency .. (202) 646-2500
Fire Department/Rescue (most urban areas) 911
Homeland Security (to report a biological/
chemical incident or threat) .... (800) 424-8802
National Health Information Center .... (800) 336-4797
Police Department (most urban areas) 911
State Department Overseas Citizen Services
Emergencies and Travel Advisories ...... (202) 647-5225
Passport Services .... (202) 647-0518
TDD Operator Services .... (800) 855-1155
U.S. Coast Guard National Response Center
Oil and Chemical Spills Hotline .... (800) 424-8802
U.S. Customs Service Fraud Hotline .... (800) 487-3253
Visa Services (Department of State) .... (202) 663-1225

Federal Government Resources

The following resources can provide important information to small businesses about complying with applicable federal regulations. For general information about compliance with federal regulations, visit www.business.gov.

Environmental Protection Agency (EPA)
http://www.epa.gov/epahome/business.htm

Equal Employment Opportunity Commission (EEOC)
http://www.eeoc.gov/

Internal Revenue Service (IRS)
http://www.irs.ustreas.gov/businesses/index.html

Occupational Safety and Health Administration (OSHA)
http://www.osha.gov/

U.S. Department of Labor (DOL)
http://www.dol.gov/dol/regs/main.htm
The Department of Labor is a major agency enforcing federal labor laws relating to employment practices, workplace safety, wage and hours, employment standards, federal unemployment, and labor relations.

U.S. Department of Transportation (DOT)
http://www.dot.gov/business.html

Workplace Posters

Federal and state regulations require that employers post notices regarding the rights of employees in the workplace. Most employers do this by placing a poster in an area prominently visible to employees. For information about posting requirements, visit the DOL compliance website:
http://www.dol.gov/elaws/posters.htm

Appendix
Glossary of Risk Management Terms

Accident – An sudden, unexpected and unintended event resulting in loss of or damage to property and/or injury

Accounts receivable insurance – Coverage that pays the cost of reconstructing receivables records that have been damaged or destroyed by a covered peril. Also pays for receivables that cannot be collected due to damaged records.

Act of nature – Also known as Acts of God, refers to natural events such as weather, as opposed to man-made occurrences.

Actual cash value (ACV) – A method of valuing property as of the time of its loss or damage. Market value may be used, or the replacement cost minus any depreciation.

Actuary – A specially trained statistician who calculates appropriate insurance premiums, and provides other statistical information for an insurance company.

Additional insured – An individual covered under the terms of a policy even though not specifically named as insured. Officers of a corporation may be included as insureds under the terms of a policy written in the name of the corporation.

Adjuster – A person who helps settle insurance claims by providing estimates of the value of insured losses.

Advertising injury – Claim arising out of slander, libel, copyright infringement, or misappropriation of advertising ideas.

Aggregate limit – The maximum amount an insurer will pay under a policy in any one policy period.

Basic named perils – Perils typically covered in a property insurance contract: fire, lightning, windstorm, civil commotion, smoke, hail, aircraft, vehicles, explosion and riot.

Blanket insurance – Property insurance covering a group of property items.

Bodily injury – A term that refers to physical injury, sickness, or disease, or a resulting death. May also include emotional injury in some jurisdictions.

Boiler & machinery insurance – Provides coverage for damage to and damage caused by machinery and equipment that employs pressure, steam, heat or electricity.

Bond, fidelity – A bond that guarantees the principal's honesty.

Business income coverage – Pays business income lost due to a decrease or halt in business activity arising from a covered peril. Coverage includes reasonable extra expense the insured undertakes to expedite return to business operations, such as short-term equipment or facilities rental.

Businessowners policy (BOP) – A package of property and liability insurance for small and medium businesses.

Captive agent – An insurance agent working exclusively for a single company, as opposed to an independent agent

Cargo insurance – An policy covering cargo in transit while carried by a third party.

Casualty insurance – Insurance covering legal liability for losses caused by bodily injury to others or physical damage to property of others.

Due diligence – Obligation of fiduciaries, principals and agents to verify information relied upon for financial decisions.

Fidelity insurance – Provides coverage for losses due to dishonest acts by employees.

Fiduciary – A person or organization that manages, controls, or disposes of the property of others.

Fraud – Obtaining something of value from others by convincing them to rely on representations known to be false.

Glass insurance – Commercial property insurance that covers glass windows, glass signs, and other glass fixtures.

Increased cost of construction – The difference in cost between rebuilding a damaged building as it was and rebuilding a damaged building to conform to more recent (and more costly) building code standards.

Insurance – A promise of compensation for specific potential future losses in exchange for a periodic payment

Insurance agent – Individual who is licensed by a state to sell insurance for one or more specific insurance companies

Insurance broker – An independent agent who represents the buyer, rather than the insurance company, and tries to find the buyer the best policy by comparison shopping

Insurance carrier – The company that issues and assumes the risk of an insurance policy

Insurance policy – A contract of insurance describing the term, coverage, premiums and deductibles; also called policy

Key employee insurance – Life insurance written on the life of an organization's officer or other important employee, whose death would cause the organization financial hardship.

Libel – Written defamation of another's reputation.

Malpractice – A form of professional liability insurance, normally used in reference to insurance for legal or medical practitioners.

Market value – The price at which insured property could have been sold just prior to its loss or damage. See Actual Cash Value.

Moral hazard – Situation in which an individual has an incentive to neglect or destroy something of value. Insurance coverage may create a moral hazard, as in cases where an individual may set fire to an asset in order to collect insurance proceeds.

Named insured – The party or parties specifically named as insured in the insurance contract. Contrast with additional insured.

Named perils – Perils specifically listed as covered by a property insurance policy.

Negligence – Failure to act in a way that would normally be expected of ordinary, reasonably prudent individuals.

Open perils – Property coverage that covers losses regardless of peril. Contrast with named perils.

Peril – A potential cause of loss, such as fire, windstorm, theft, or explosion.

Premium – Money paid by the insured to the insurer to obtain coverage.

Product recall insurance – Coverage for the costs of recalling products known or believed to be defective.

Real property – Land and any buildings or permanent structures.

Replacement cost insurance – Pays based on the full replacement cost, without regard to depreciation or deductible.

Respondeat superior – Term referring to the legal liability that an employer may have for the actions of employees while in the course of their employment.

Rider – An endorsement attached to a policy that modifies the coverage.

Risk – The quantifiable likelihood of loss or less-than-expected returns

Risk management – The process of analyzing exposure to risk and determining how to best handle such exposure

Severability – A provision that insurance applies separately to each insured under the policy.

Specific insurance – An insurance policy that specifically described the covered property. Contrast with blanket insurance.

Strict liability – Legal standard whereby makers or sellers of defective or dangerous products are held liable regardless of fault or negligence.

Umbrella liability insurance – A type of liability insurance available to individuals and companies protecting them against claims above and beyond the amount covered by their primary policies or for claims not currently covered.

Workers compensation insurance – A type of employers liability coverage that conforms to the workers compensation laws of the state in which it written.

AIG Small Business℠

Every day small business owners come face-to-face with more complex risks, each poised to devastate a promising enterprise. No one knows the challenges confronting American businesses better than AIG Small Business. We use this knowledge to provide specialized insurance and services exclusively for small businesses.

Professional Liability

At American International Companies® more than 25 years of professional liability experience have taught us to address the ever-changing exposures of a wide range of professions and to provide clients with professional liability solutions that enable them to operate with confidence.

Overview:

Covers professionals for negligent acts, errors and omissions in the performance or failure to perform the professional services for a third party for a fee.

Benefits:

- Underwritten by company with over 25 years of experience in professional liability.
- Eligibility is flexible to meet the diverse needs of professionals.
- Competitive rates.
- Claims are serviced by team of over 40 professionals specializing in professional liability.
- Coverage is specifically tailored to meet the unique needs of professionals.
- Policies issued by the property and casualty subsidiaries of the American International Group, Inc.

Features:

- Policies are available on a claims-made and reported form.
- Applies to claims or suits brought against an insured arising out of any actual or alleged breach of duty, neglect, error or misstatement, misleading statement or omission committed in the conduct of the insured's profession for others for a fee.

- Coverage for defense costs, charges and expenses incurred in conjunction with a claim or suit filed against an insured is included in the limits of liability.
- Generally covers claims committed by and suits brought against the insured in the United States, its territories or possessions and Canada. Some policies offer worldwide coverage territories.

Excess Liability

As one of the most experienced underwriters of excess casualty coverages in the United States, American International Companies have a wealth of excess/umbrella specialists who understand what it takes to effectively address your clients' needs for protection against catastrophic loss. In addition, our fast response, innovative loss prevention and crisis management products, and financial strength provide the additional advantages your clients need to compete in a fast-paced, high-risk global marketplace.

Commercial Umbrella

Commercial Umbrella Liability helps protect insureds for catastrophic liability claims such as an explosion, major crash or product contamination incident that can cause long term damage to a company's reputation and bottom line. The AIG Commercial Umbrella Liability policy comes with a valuable feature, CrisisResponse® to help businesses confront crises.

CrisisResponse®

CrisisResponse provides immediate crisis assistance. When catastrophe strikes, a company must act swiftly and decisively to prevent damage to its reputation, a decline in revenues and the loss of valued customers. CrisisResponse is there for companies as soon as a major crisis occurs providing funds to pay for crisis response costs and crisis communications management services to help face a media onslaught. CrisisResponse prepares companies to confront the chaos that may accompany a crisis. An enhancement to AIG's Commercial Umbrella, CrisisResponse provides immediate access to the expertise of the AIG Claims Department and funds needed to pay for crisis response costs in the event of a serious casualty crisis. This type of assistance relieves companies from the immediate financial pressures of a crisis, and assists companies in wisely managing the situation at hand.

Employee Benefits

Voluntary Accidental Death and Dismemberment Personal Accident Insurance can be extremely important to your employee's financial security in the event of an accident. Personal Accident Insurance provides adequate and affordable protection against a sudden, unforeseen catastrophe. This voluntary coverage gives your employees the financial resources they need to help protect their families.

Why Select Our Personal Accident Insurance?

- Pays claims for injuries caused by accidents on or off the job.
- Provides benefits in addition to other insurance plans in effect at the time of the accident.
- Provides Basic Accidental Death & Dismemberment and paralysis benefits.
- Covers participating employees 24 hours a day, 365 days a year, worldwide.

Added Features:

- Family Income
- Tuition for Children and Spouses
- Day Care Continuation
- Waiver of Premium
- Rehabilitation
- Bereavement and Trauma Counseling
- AIG Assist

Business Travel Accident Insurance. Sadly, we no longer can take safety for granted during domestic or even local travel. Companies need to protect their people. And employees expect and deserve coverage when they venture out onto the road, over the rails, or in the air.

Why Select Our Business Travel Accident Insurance?

- Highly customized coverage, from coverage limited to business travel on commercial airlines to 24-hour protection, anywhere in the world. Companies may cover employees traveling for business or for business and personal reasons.
- Flexible benefit amounts and coverage. Companies may vary benefits and coverage for different classes of employees - such as "all sales representatives."

- Benefits are paid in addition to Workers' Compensation or any other insurance.

Comprehensive Coverage:
- Accidental Death & Dismemberment
- Medical Protection (Accident Medical Expense)
- Paralysis
- Emergency Medical Evacuation
- Repatriation of Remains
- AIG Assist®

International Insurance

AIG WorldRisk℠

A few years ago small businesses were expanding operations, exporting goods, and sending employees overseas with little concern about the risks. Today, international exposures cannot be ignored. Keeping employees and assets safe overseas requires a comprehensive insurance approach. Many small to mid-sized operations mistakenly believe that such an approach is beyond their means. In reality, it can be easily and cost-efficiently achieved through AIG Small Business and AIG WorldRisk.

One way to do it efficiently …

AIG WorldRisk specializes in managing the international exposures of U.S.- and Canadian-based enterprises doing business abroad. We understand the exposures small to mid-sized businesses face—from kidnap & ransom and political risks to property, marine cargo, and general liability exposures. And we have created an International Insurance Portfolio that allows a company to combine the coverages it needs to manage multiple overseas exposures into one comprehensive program.

Coverages can include:
- Foreign Commercial General Liability Insurance
- Foreign Commercial Auto Liability Insurance
- Foreign Voluntary Workers' Compensation / Employer's Liability Insurance, including Defense Base Act Coverage
- Employers Liability – US $1 million limit per occurrence
- Repatriation up to US $100,000 / no aggregate
- Foreign Property
- Marine Cargo and War Risk
- Foreign (location) Comprehensive Crime

- Kidnap & Ransom / Extortion
- Political Risk Insurance
- Foreign Travel Accident & Emergency Medical Expense Insurance

Key Advantages:
Any or all coverages can be combined in one portfolio--with one affordable minimum premium and one invoice. With coverage, clients receive the top-quality service and expertise AIG member companies offer in 130 countries and jurisdictions worldwide. This same global network lets companies secure locally-admitted policies where required worldwide.

Our international insurance portfolio is ideal for a wide range of organizations with international exposures, including exporters/ importers, manufacturers, schools and universities, not-for-profit organizations, service companies and financial institutions.

Directors and Officers (D&O)

Private Company D&O
It's fast moving, dynamic, less-bureaucratic, with management closely involved in day-to-day business operations, and important decisions made on the spot. But the entrepreneurial environment has a dangerous downside as well. Because they are so closely involved in daily operations – and often the ones making key decisions – small company owners and managers are extremely vulnerable to lawsuits initiated by employees and others. When a costly D&O liability claim does occur, these executives' personal assets, as well as the company's financial viability, may be put on the line.

The greatest threats come from employees alleging discrimination, retaliation, wrongful termination and harassment. Over 81,000 of these and other employment practices claims were filed with the Equal Employment Opportunity Commission in 2003 . It's not unusual for private companies to be sued by shareholders, customers, competitors, and government bodies as well.

A multidimensional response …
AIG Small Business offers an affordable way for small private companies to secure the specific protection they need against these claims: Private Collection®, a flexible package of man-

agement liability insurance programs custom-crafted for growing businesses. The package allows business owners to select the type of insurance and the amount of coverage they need, and assemble a coverage package with low retentions and premiums.

Options include:

- *Private Collection Employment Practices Liability Insurance*, which addresses claims by employees for wrongful termination, discrimination, harassment and other commonly alleged violations. Coverage automatically includes EPL Pak® Premier employment practices training and loss prevention services.
- *Private Collection Directors, Officers and Private Company Liability Insurance*, which protects corporate and management assets in a variety of claims, including private placement securities claims, breach of contract claims, and other lawsuits initiated by suppliers, competitors, customers, and government bodies. AIG Small Business experts can help assess the amount of coverage a company needs based on its exposure and structure retentions that work best with the company's budget.

ERISA Liability Insurance

Virtually every move made by small business owners, directors, officers and other "fiduciaries" with respect to employee benefit plans that they offer employees is regulated by the Employee Retirement Income Security Act of 1974 (ERISA). And as the courts continually expand ERISA's reach, the obligations – and potential liabilities – of fiduciaries continue to grow.

Odds are now greater than ever that a business owner will land in court, defending allegations that they somehow breached their fiduciary duty. Worst of all, these lawsuits can put a business owner's personal assets at stake – a daunting specter, since even a minor mistake in the running of the plan or the investment of its assets can cost a fiduciary or the plan sponsor hundreds of thousands of dollars – just to defend.

Even businesses offering only "self-directed" 401(k) plans are at significant risk, since many business owners and executives wrongly assume that if the plans are self-directed, then they are relieved of liability. In fact, a sizeable lawsuit or penalty, arising from the failure to monitor the plan's investments or failure to minimize expenses charged the plan, could drive a small business into bankruptcy. And if a business embarks on a merger or acquisition, a lawsuit becomes even more likely.

ERISA-related claims can cost companies millions. And with alleged fiduciary wrongdoings making headlines daily, employees are more likely than ever to file suit.

Some additional reasons for considering ERISA Liability Insurance are:

- A fiduciary's personal assets can be at risk in ERISA related lawsuits.
- ERISA Liability Insurance is easy, affordable corporate asset protection.
- Frequently, ERISA claims involve employees' denial of benefits allegations.
- Using plan assets, not insurance, to fund ERISA litigation defense might in itself lead to lawsuits.
- No business is immune: Even small businesses with "self-directed" 401(k)s are vulnerable.
- Fiduciaries face conflicts: What's good for the company is not always best for plans and plan participants.
- M & A activity frequently triggers ERISA lawsuits.
- A stock market downturn can rev-up ERISA litigation.
- Directors and officers don't always act like fiduciaries because they don't always realize they are fiduciaries.

AIG Business Owners Program (AIG BOP)

Small businesses are the fastest growing segment in the U.S. economy and represent 95% of all U.S. businesses. Statistics show that small businesses will create more jobs and have a greater economic impact than any other business segment.

The AIG BOP is a simple package policy, with multiple coverage parts, designed to fulfill the insurance needs of small business owners. The AIG BOP has more depth and flexibility than the traditional Business Owners Policy (BOP). It gives the small business owner the flexibility of purchasing a combination of insurance coverages on one policy.

The AIG BOP is a single cost-efficient policy with five available coverage parts:

- Property Coverage
- General Liability (GL)
- Umbrella Liability (UL)
- Professional Liability (E&O)
- Employment Practices Liability Insurance (EPLI)

All coverages are not mandatory on the AIG BOP. The policy allows for certain coverages to be purchased mono-line. When coverages are purchased as a package, an account credit can often be applied. The AIG BOP offers many limit and deductible options along with additional endorsements for enhanced coverage. This approach allows the AIG BOP to expand coverage options as the small business grows and matures. The AIG BOP was designed to be a high value, low-cost solution for selected programs of small businesses. These selected programs include:

- Office
- Retail
- Wholesale
- Service
- High-Tech

AIG Global Energy

AIG Global Energy Middle Market (GEMM) provides powerful insurance protection for small and middle market energy operations in the U.S., including oil and gas, power generation and utilities, and chemical companies. Along with Starr Technical Risks Agency, Inc. (Starr Tech) we offer a comprehensive array of property and casualty products and services designed with the needs of independent and locally owned companies in mind.

Recognizing the need for small and middle market clients' liability protection and cost management, along with AIG Small Business, we developed a complete unit focused on comprehensive coverage to reduce gaps or overlaps. With our primary casualty, excess casualty, and property underwriters located under one roof collaborating closely together, we are able to create the most efficient, seamless coverage for small businesses. Our clients receive first-class protection and a level of financial stability unmatched by any other insurance organization.

Strong coverages - Financial stability

Primary Casualty
AIG Global Energy offers substantial Workers' Compensation and Employers Liability, Commercial Auto Liability, and Commercial General Liability coverages for growing energy operations with annual revenues up to $75 million. Guaranteed Cost Programs only.

Excess Casualty
Our commercial umbrella liability insurance is designed for companies with annual revenues up to $10 million and comes with:

- Limits up to $25 million.
- Optional claims-made and time element pollution coverages.
- Crisis management service, expertise, and funds.

Property
Partnering with AIG Global Energy Middle Market (GEMM) Starr Tech is now underwriting the following for energy and related risks with annual revenues up to $75 million:

- Property
- Boiler & Machinery
- Table Driven Product

Classes of business

AIG Global Energy Middle Market focuses on energy and energy-related businesses. This includes companies involved in the following classes:

Oil/Gas/Petrochemicals

- Crude Petroleum & Natural Gas
- Oil & Petrochemical Processing & Refining
- Oil & Natural Gas Extraction, Exploration & Production
- Oil & Natural Gas Drilling
- Transmission, Distribution & Storage
- Oil & Natural Gas Pipelines & Pipeline Terminal Facilities
- Petroleum Products Manufacturing

- Petroleum Bulk Products & Terminals
- Petroleum Machinery & Equipment Manufacturing
- Home Heat Oil Dealers
- Steel Pipe & Tubes
- Oil Field Service Contractors
- Ethanol Plants, Manufacturers & Distributors

Utilities & Power Generation

- Electric, Natural Gas & Combination Utilities
- Electric Power Generation Facilities
- Electric Power Transmission & Distribution
- Natural Gas Transmission & Distribution
- Independent Power Producers
- Utility Contractors Performing Normal Utility Operations, such as plant maintenance or power line & pipeline work

Chemicals

- Alkalis
- Industrial Gases
- Industrial Organic & Inorganic Chemicals
- Industrial Chemicals & Allied Products Distribution

For more information about AIG Small Business products and services, visit

www.aigsmallbusiness.com

or call toll-free

1-877-867-3783.