


**MANAGING RISK**  
TACTICS TO CONTROL RISK IN BUSINESS OPERATIONS


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**AGENDA**


**APPROACH:** Understanding your potential risks



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**APPROACH**

- Business Risk
  - Exposure to harm
  - Loss or liability from business operations
- Personal Risk
  - Potential for personal wealth to be exposed to business risks
- Risk Management
  - Customized strategy to minimize and control risks
  - Understand layers of legal protection and hidden liabilities
    - .... and, add a shield



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**APPROACH:** Understanding your potential risks

**SHIELD:** Protecting your personal assets

**ASSESS:** Measuring your business risks

**CONTROL:** Managing your business risks

**SUMMARY:** Tips and Q&A




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**APPROACH**

Layers of Protection

- Legal Entity - Statutory Shield
- Contractual - Rights and Responsibilities
- Insurance – Protection from Accidents



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## APPROACH

Hidden Liabilities

- Intentional and purposeful harm
- Unpaid wages
- Taxes, including wage taxes
- Guarantees

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## FACTORS TO CONSIDER

- Ease of Formation
- Management Structure
- Liability and Financial Risk
- Continuity of Existence
- Transferability of Ownership
- Distribution of Profits ... and Losses
- Tax Treatment

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## BUSINESS ENTITIES

- Sole Proprietorship
- General Partnership
- Limited Partnership (LP)
- Limited Liability Partnership (LLP)
- Limited Liability Company (LLC)
- Benefit Company
- Business Corporation (C Corp)

- “S Corp”
- Close Corporation
- Professional Corporation

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## SHIELD

**GOAL:** Protection of your Personal Assets

**SOLUTION:** Creation of a Statutory Legal Entity

**RESULT:** Separation of Business Operations from your Personal Wealth

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## BUSINESS ENTITIES

- Sole Proprietorship – *not statutory*
- General Partnership – *not statutory*
- Limited Partnership (LP)
- Limited Liability Partnership (LLP)
- Limited Liability Company (LLC)
- Benefit Company
- Business Corporation (C Corp)

- “S Corp”
- Close Corporation
- Professional Corporation

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## BUSINESS FORMATION

- Decide on the type or "Form of Business" that best meets your needs
  - Select and clear the business name: state and US Patent and Trademark Office
- Select jurisdiction
- File the organizational documents for that Form of Business with the State, as required
  - Consider any necessary foreign qualifications for other states
- Prepare governing documents: Partnership Agreement, Operating Agreement or ByLaws
- Advertise/publish the formation of the business, if required
- Appoint a Registered Agent, if choose or if required
- Obtain an Federal Tax ID - EIN for the business from the IRS and select tax treatment
- File for State and Local sales tax collection and remittance
- File for any Fictitious Business Names to connect to legal entity
- Protect the business' name or logo by registering a Trademark or Service Mark

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## RISK ASSESSMENT

**Identify:** What are my risks?

**Analyze:** What is the probability of a risk occurring?

**Evaluate:** What is the impact of a risk occurrence on my business?

**Treatment:** What is the best way to fix or mitigate the risk that has the least impact on my company's reputation?

**Monitor & Review:** Repeat

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## LICENSING REQUIREMENTS

- Many businesses are required to obtain certain licenses and permit
  - Federal, state, county or local government
  - Products or services
- Requirements depend on the type of the business and where its located
  - Many licensing requirements are regulatory and pertain to matters such as Sales Tax Collection, Employee / Customer Health and Safety, and Environmental Protection
  - State professional licensing requirements and regulatory agency contact information is available in the Professional Licensing section of the Pennsylvania Department of State's website
  - File *FORM PA-100, Pennsylvania Enterprise Registration* to apply for certain licenses, add employees and sales tax
  - Local and municipal licensing requirements may be found on individual county, city and township government websites

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## RISK ASSESSMENT

**Consider:** Legal vs. Business Objectives

- Customers (past/present relationship)
- Dollar value of transaction
- Margin
- Future business
- Size/significance of sale
- Risk of goods and services

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**ASSESS:** Measuring your business risks

Understand and utilize layers of protection  
... customize you risk management

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## CONTROL

**AVOID:** After analysis, change your plans

**ACCEPT:** Take no action to address the risk

**MITIGATE:** Take steps to reduce the adverse effects of the risk

**TRANSFER:** Shift the risk to another party




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## RISK CONTROL STRATEGIES

**Risk Transfer:** Shift the adverse effects of a potential risk to an independent third party

- Insurance: Policy transferring the costs resulting from a risk's occurrence from the policyholder to the issuing insurance company for a fee




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## RISK CONTROL STRATEGIES

**Risk Transfer:** Shift the adverse effects of a potential risk to an independent third party


- Contractual: Negotiated agreement that defines each party's role and responsibility in managing a potential risk
- Equitable Allocation: Agreement that assigns responsibility for future liability to the party with the most control over the source of a risk
- Indemnification Provisions: Language inserted into a contract where one party agrees to cover any damages or injuries that the other party might incur due to its actions or inactions



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## INSURANCE

- Liability Insurance
  - General business liability
  - Special - cyber liability, identity theft, terrorism, etc.
- Professional – errors and omissions
- Property – building, equipment, inventory
- Workers Compensation
- Umbrellas
- Commercial auto




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## RISK CONTROL STRATEGIES

**Understand and Apply:**

- Indemnification
  - Indemnify
  - Defend
  - Hold Harmless
- Limitation of Remedies and Liability
  - Warranties
  - Amount
- Negligence
  - Sole Negligence
  - Sole Gross Negligence



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## RISK ASSESSMENT - EXERCISE


**Identify:** What are my risks?

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**Treatment:** What is the best way to fix or mitigate the risk that has the least impact on my company's reputation?

**Monitor & Review:** Repeat



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## CONTROL - EXERCISE


### TREAT THE RISK

**AVOID:** After analysis, change your plans

**ACCEPT:** Take no action to address the risk


**MITIGATE:** Take steps to reduce the adverse effects of the risk

**TRANSFER:** Shift the risk to another party

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## SUMMARY & TIPS ... RISK!

- Evaluate risks in your business – rank them and address them accordingly via your customized management strategy
- Secure signed written contracts from your business partners, such as suppliers and vendors – don't rely on hand shake or oral agreements
- Modify contracts to limit Indemnification, Remedies and Liability and Negligence
- Carefully review contracts other ask you to sign – don't accept risk that is outside your control
- Obtain insurance for risk that can't be fully mitigated – insulation for your specific exposures, beyond standard policies
- Keep records – need to substantiate in the event of an issue

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## Early and on-going Risk Assessment is vital to your business's continued success!

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## SUMMARY & TIPS ... SHIELD!


- Have a separate statutory legal entity for your business, or businesses
- Create custom governing documents: Partnership Agreement, Operating Agreement or ByLaws
- Obtain a Federal Tax ID as the business EIN
- Complete all necessary tax filings for federal income tax, state income tax, sales tax, etc.
- Identify and obtain any necessary licenses or permits
- Consider contingency plans for any non-transferable ownership
- Open a separate business banking account
  - Do not commingle personal and business funds

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## QUESTIONS?

## THANK YOU!

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