

The logo for National Business Institute is a large orange triangle pointing downwards, partially overlapping a blue triangle pointing upwards. The text "NATIONAL BUSINESS INSTITUTE" is written in black, bold, sans-serif capital letters, rotated 45 degrees counter-clockwise, and positioned over the white space between the two triangles.

**NATIONAL BUSINESS
INSTITUTE**

**BUSINESS OPERATIONS BASICS:
MITIGATING RISKS AND LIABILITY**

ROBERT E. HAUBERG, JR.

BAKER DONELSON

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ASSESSING RISK

What is your business endgame?

- Build up the company and sell it
- Continue to own and manage company for the long term

Think strategically – not just for this year

- If overly aggressive, will there be collateral consequences, pressure to tolerate risk
- If selling the company, how will acquirer's due diligence and its own tolerance for risk affect the likelihood or terms of a deal
- Lack of compliance creates added risk

CAPITAL AND OPERATING INCENTIVES AND RISKS

As owner, how will R&D and daily operations be funded?

Are there stockholders or other partners?

How transparent will finances and operations be?

What rights will minority shareholders have?

- To inspect the books and records
- To be treated fairly in valuing the company, especially when company is sold
- Recourse to direct litigation for faulty valuation / lack of business judgment / oppression or “unfair prejudice”
- Use of derivative litigation to recover for the company for negligence, breach of duty, breach of trust by directors

Avoid “robbing Peter to pay Paul”

- Beware falsifying revenue or expenses to show a better bottom line
- Hire good accountant

TAX ISSUES IN OPERATIONS

- Beware obligations to pay employee benefits and taxes – healthcare, social security deductions
- Incentive may be to postpone paying, invest now in R&D or expansion, and hope to make it up by end of the tax year so payment can finally be made
- Risk becomes one of tax evasion and IRS penalties

SETTING INTERNAL POLICIES AND COMPLIANCE

Internal Structure

1. HR Policy and reporting mechanism
2. Compliance Plan
 - a. Tone at the top
 - b. Training
 - 1) In person
 - 2) Electronically
 - c. Conformance to regulatory standards/audits if in a regulated industry
 - d. One size does not fit all
 - e. Benefits outweigh costs
 - 1) Reputational damage
 - 2) Sentencing Guidelines reduction in corporate fines

SETTING INTERNAL POLICIES AND COMPLIANCE (CONT.)

3. Reporting to Compliance Officer/Inside Counsel/Board Committee/Supervisor
 - a. Hot-line/anonymity
 - b. Non-retaliation
 - c. Information flow to avoid whistleblower going public
 - d. Investigatory / disclosure process

CONTRACTING WITH THE GOVERNMENT

Risk in Obtaining Contract

1. State Procurement Process

- a. Avoid pay for play
- b. Bids versus sole source contracts
- c. 2017 change in procurement process in Mississippi

2. Federal Procurement Process

- a. Federal Acquisition Regulations (FAR)
- b. Military (DFARS), Civil (GSA), Healthcare (CMS)
- c. Truth in Negotiations Act
 - 1) Skill required
 - 2) Labor costs and other expenses
 - 3) Defective pricing

CONTRACTING WITH THE GOVERNMENT (CONT.)

- a. Procurement Integrity Act
 - 1) No sharing by government of bid information
 - 2) No collusion among bidders
- b. SBA minority §8 contractor and SBIR awards
- c. Fed Biz Opps notice
- 3. Operational risk
 - a. Pricing
 - b. Allocating costs to correct project, line items
 - c. Failure to provide service, compliant goods
- 4. Risk of Cancellation of Contract (termination for convenience/cause),
recoupment by government, litigation under federal False Claims Act

EXAMPLES OF RISK IN OPERATIONS

EMPLOYEE SELF-DEALING

1. Combating embezzlement/theft of equipment
 - a. Double person check approval
 - b. Alternate vacation times for authorizers
 - c. Warehouse surveillance
2. Avoiding employee kickbacks – frequency of bids
3. Keeping receipts for all expenses – avoid cash only transactions for tax audits

EXAMPLES OF RISK IN OPERATIONS

VENDOR/SUPPLIER RELATIONS

1. Collusion among vendors

- a. Identity of bids
- b. Alternating/rotating bids
- c. Territorial restrictions on service/delivery

2. Self-dealing by employees

- a. Pay to play required of vendors
- b. Uncharged service/supplies for employees personally
- c. Refunds to employees off-book

VENDOR/SUPPLIER RELATIONS (CONT.)

3. Cheating by suppliers

- a. Mislabeling
- b. Shorting
- c. Substitution of untested or defective equipment/parts

4. Mischarging

- a. Booking sales before delivery to enhance quarterly/annual revenues
- b. Allocating to wrong department/budget item

EXAMPLES OF RISK IN OPERATIONS

THEFT OF TRADE SECRETS/INTELLECTUAL PROPERTY

1. Protect innovations with patents and trademarks
2. Keep confidential so label restriction as such
3. Set limit on what departing employees can take with them
4. Promptly assert rights if compromised
5. Notice unapproved/unlicensed user to cease and desist
6. Threaten litigation

EXAMPLES OF RISK IN OPERATIONS

WORKPLACE SAFETY/ENVIRONMENT

1. Key Environmental Regulations Affecting Business Owners

- a. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA):
 - 1) Hazardous substances released into the environment
 - 2) Liability of purchaser, existing owner
 - 3) Phase I conducted to earn defenses and limit liability
- b. Clean Water Act:
 - 1) Storm water runoff from construction projects
 - 2) Disturbance of wetlands in property development
- c. Resource Conservation and Recovery Act (RCRA):
 - 1) Solid waste and underground storage tanks

EXAMPLES OF RISK IN OPERATIONS WORKPLACE SAFETY/ENVIRONMENT (CONT.)

2. Agencies which inspect/investigate

- a. OSHA – construction/workplace accidents, equipment safety
- b. EPA/MDEQ – underground storage tanks, leaking chemicals, discharges into waterways, medical and other hazardous waste
- c. NTSB/MDOT – delivery vehicle accidents, 18 wheelers to railroad cars

DEALING WITH ENFORCERS AND WHISTLEBLOWERS

1. Inspections/audits

- a. Licensing agencies
- b. Loan/grant programs
- c. Safety/environmental checks

2. Search Warrants/subpoenas

- a. Have protocol/training in place in advance
- b. Cooperate, do not obstruct or destroy documents
- c. Issue freeze memo, explanation of rights/obligations to employees

3. Whistleblowers

- a. Resist firing, reassign laterally instead, avoid obvious retaliation
- b. Learn what details are from whistleblower
- c. Prepare internal investigation report if enforcers have been informed
- d. Sometimes voluntary disclosure to enforcer will mitigate
- e. Incentives to whistleblowers – False Claims Act, IRS, SEC