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Legal Risk Audit –
Ten Topics to Trap You

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Use our checklist covering ten key topics to make sure you minimise the legal risks in your business.

1. Terms and Conditions

Why are they important?

They set out the legal basis of how you supply your goods or services to customers.

Do your terms and conditions:

- ❏ Clearly set out what goods or services you will provide and how and where they will be delivered?
- ❏ Make it clear how much and when notice has to be given to terminate the agreement (make sure to check this if you are receiving supply of services on another party's standard terms)?
- ❏ Set out how much and when you are going to get paid?
- ❏ Allow you to take back your goods/cease delivery of services if you don't get paid?
- ❏ Provide for what happens if there is a breach or dispute?
- ❏ Limit your liability for breach?

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2. Key Commercial Contracts

Why are they important?

A key contract represents a substantial level of risk and reward for your business and can remain in effect for a substantial period of time. The very viability of your business may depend upon not getting it wrong.

In addition to the matters set out above under Terms and Conditions, consider whether your Commercial Contracts:

- ❏ Are with a party or parties who can't afford to pay you/aren't properly resourced to deliver their obligations to you under the contract.
- ❏ Properly reflect all the commercial terms.
- ❏ Are drafted in a one-sided way in favour of the other party.
- ❏ Allow for early termination without cause or if the contract becomes loss-making.
- ❏ Have any in-built price adjustment or change control mechanisms.

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2. Key Commercial Contracts (continued)

In addition to the matters set out above, consider whether your Commercial Contracts:

❏ Protect your confidential information and intellectual property.

❏ Restrict your or the other party's ability to provide similar goods or services to others (either at all or on better terms) or to 'poach' the staff of the other.

❏ Have properly drafted limitations and exclusions of liability (including indirect losses and overall damages cap).

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3. Employment/Staff Documentation

Why is it important?

Sets out the terms on which you employ your staff creating a regulated work environment and disciplinary procedures to maximise efficiency. Failure to put them in place can make managing staff much more difficult and lead to significant financial risk.

Does your business have:

❏ Procedures in place to avoid discrimination on recruitment?

❏ Contracts of employment and directors' service contracts (including post-termination restrictions and clauses protecting your confidential information and intellectual property)?

❏ Proper contracts regulating independent contractors/consultants?

❏ Staff policies covering internet use, equal opportunities, bullying and harassment?

❏ A procedure for checking that all employees have the right to work in the UK?

❏ Share Option Schemes to incentivise key staff?

❏ A risk of automatically acquiring employees upon business or contract acquisition?

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4. Property

Why is it important?

Property is often the single most expensive asset or (in the case of a lease) largest potential liability a business (or business owner) has. The right premises can also be key to the continuance of a business.

Does your business require:

❏ Advice on who should own the property (e.g. a company, the owners or their Pension Funds)?

❏ Drafting or review of commercial leases (particularly with regard to security of tenure and risks of dilapidation claims at end of lease)?

❏ Documents charging property by way of security for financing?

❏ Assistance dealing with a problem tenant?

❏ Any other commercial property advice generally?

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5. Credit Control

Why is it important?

Because 'cash is king'!

Does your business have adequate:

- ❏ Credit checks prior to selling goods/providing services?
- ❏ Contractual sanctions in place to pressurise late-payers?
- ❏ Procedures in place to ensure all bills are chased?
- ❏ Precedent claim letters compliant with court protocols?
- ❏ Staff training to enable internal issuing and handling of small claims for debt recovery?

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6. Financing

Why is it important?

It can help you to grow your business. We can work with all sorts of finance providers to put the necessary security in place and help you gain access to funds.

Consider whether you have:

- ❏ Sufficient facilities to secure required cashflow? Are these on-demand or term loans (and if term loans, how easily can the funder 'wriggle out' of them)?
- ❏ Need of invoice discounting/asset finance/loans from pensions funds or similar non-Bank facilities.
- ❏ Taken advice on any relevant facility and security documents (including any personal guarantees or other personal security).
- ❏ Documented inter-company/connected party loans.
- ❏ Removed defunct or historic corporate and personal security.

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7. Corporate Structure

Why is it important?

To make sure that your company/group is structured in the most tax efficient way so as to maximise profits and to ensure key assets are secure.

Have you considered the best way to structure your business so you:

- ❏ Minimise tax – both on corporate profits and personal extraction of income and capital value?
- ❏ Protect key assets?
- ❏ Are not restricted by out-of-date articles of association?
- ❏ Have a clear idea of business succession so that the business can survive your departure?

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8. Shareholder/Partnership Agreements

Why are they important?

What would happen to your business if any of the owners were to fall out, leave or die? A good agreement should make a dispute less likely as it clearly sets out how the business is run and the owners' respective rights.

Have you thought about:

- ❏ The roles of each of the owners?
- ❏ Who has control of the business?
- ❏ What income will the owners extract and how?
- ❏ How is an exit handled if an owner leaves or dies?
- ❏ How are conflicts between owners resolved?

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9. Confidentiality, Data Protection & Intellectual Property (IP)

Why is it important?

Information and brand identity are key assets of modern businesses and the confidential information and personal data of others held by you need to be handled correctly.

Does your business:

- ❏ Make sure that any disclosures of confidential information made by it are subject to a Non-Disclosure Agreement signed by all receiving parties?
- ❏ Ensure that there are proper procedures and policies in place for handling the confidential information and/or personal data of others?
- ❏ Protect its IP with the appropriate registrations?
- ❏ Have IP rights held or licensed by the appropriate entity or person (whether inside or outside your corporate structure)?
- ❏ Have proper licences for any use of IP belonging to others in its business?

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10. Succession Planning

Why is it important?

Secure succession planning makes sure that your business has a future (and a value) without you at the helm.

Have you considered:

- ❏ Up-to-date wills (which should match the provisions of any shareholders' agreement) and inheritance tax planning?
- ❏ Use of Family Trusts?
- ❏ Keyman Insurance and related cross-options?
- ❏ Lasting and general powers of attorney in case of illness or accident of a director
- ❏ Tax Considerations?

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