As always, we encourage you to take the time to thoroughly plan when going into business. Feel free to send the Counselor another email or letter with further questions but also try to continue educating yourself about business processes, what works and what doesn't.

Q. I am interested in starting a business but want to do all I can to eliminate risks and makes sure my business does not fail. What should I be concerned about? What things can I do to prevent legal issues causing my business to fail and me to lose my investment?

Doing Business in C-Town

A. Dear *Doing Business* -- As we have discussed before, one of the best things a person can do before launching any business enterprise is to evaluate what the business will require, reflect upon and identify business goals and anticipate the obstacles that will be encountered along the way. After doing so, one of the next most important steps is to prepare for and develop a plan to address these obstacles in order to reach one's goals.

All business ventures involve some degree of risk. Risk generally cannot be eliminated but oftentimes can be mitigated. A thorough evaluation of the business landscape and enlisting the support of seasoned advisors, partners or employees, for example, are among the many ways to mitigate the risks of business loss and/or failure.

Risks associated with the launch and operation of a business enterprise can come in many forms. Certain market risks and volatility due to competition, consumer trends and the economy in general are inherent to business. Business and legal issues/risks, in a perfect world could be segregated and dealt with individually, however these issues oftentimes overlap and the way a company addresses one may dictate the way the company deals with the other. For the purposes of this response we will attempt to outline some of the matters that either have legal implications or could be addressed through the assistance of your company's legal advisor.

Some of the issues you may face as you launch and begin to operate your business will include:

• Compliance with the licensing requirements and related regulations which apply to your business.

• Establishment and protection of intellectual property (i.e. trademark, copyright and patent) rights in the company and its products.

• Development of financial/spending policies and procedures and accounting standards.

• Development of employee policies and manuals to better inform employees of company standards and help the company manage liability arising from employee conduct. These policies may range from computer use or equipment handling policies and procedures sexual harassment, discrimination and equal opportunity employment policies.

• Management and timely payment of tax liabilities, which notably include payroll taxes.

Disputes regarding contributions made by owners or members of the company, rights to reimbursement and entitlement to profits and distribution of income.

Properly insuring the company to guard against liability arising from employee and customer claims, including attorney's fees, where applicable.

Ensuring that steps have been taken to insulate and guard against possible criminal liability exposure for violating the laws regulating your business. For example, there may be certain workplace safety laws or consumer information protection laws that apply to your business and which, if violated, may subject the persons in control to both civil and criminal liability.

The above list is in no way exhaustive of the issues and risks associated with launching and operating your business. If you have interest in how to deal with a specific risk, please send another inquiry to the Counselor at counselorsdesk@call-post.com .

As you think about starting your business, also take time to think about how to best position yourself and the other owners in the event you decide (or are forced to decide) to end and close your business. While, entrepreneurs rarely enter into business expecting it to fail, such an outcome is very realistic. There is no need to waste your time trying to impress with a half-baked statistic on the number of businesses that fail, but you should just understand that most will not succeed. The decision to go out of business is oftentimes a difficult one but may also be the best, and most prudent and mature step taken by a company's leadership. There are no guarantees that a well-structured business will be viable and it is clear that not all products (even innovative ones) will sell on the open market. Investing more heavily in marketing and product development could save the ship but if the bow is already underwater, the best bet could be to grab a life-preserver, jump in a raft and head back to shore before the opportunity passes you by.

When facing the prospect of winding up a business, you will likely have to deal with some, if not all, of the matters listed below. You are encouraged to take them into account beforehand.

Personal liability for guarantees on loans and other obligations of the business.

Liability for unpaid taxes assessed against the business, including interest and penalties.

Liability for continuing or long term obligations of the company, which may include office and equipment leases.

• Liens on company property

• Pending lawsuits which may name both the company and you as an owner as the plaintiff or defendant.

• Investigations by governmental agencies.

• Costs associated with straightening out poor or improper bookkeeping.

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Godspeed and be well.

Aaron A. O'Brien, Esq.

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