

## SAMPLE RISK FACTORS for a Private Placement Memorandum

Chances are if you have thought through the list of risks factors below, and are able to disclose to a prospective investor that you have considered this issues and in many cases cannot guarantee a plan B or a solution, you have at least disclosed an awareness, a caution and been out in the open with all reasonable and foreseeable risks.

1. **The stage of development of the company:** Would your company be a start up with no operating history? Start up early stage (number of months or years)? Later stages? What are the corresponding implications i.e. no assurances of profitability or cash flow at the no operating history stage, or minimum trends if the company has been operational at all?
2. **Dependencies that the company will have:** Vendors or outsourcing partners the company simply could not operate without such as a manufacturer and/or distributor, that if the party were to not fulfill its agreements, your company would be significantly damaged in its ability to do business.
3. **Potential product or service liabilities:** such as risks a user might experience if not warned or if the product is not tested before it is launched to the marketplace.
4. **Potential regulatory risk factors:** Is your business subject to changing or complex regulation that requires the prudent business owner or manager to be aware of and monitoring legal news on your topic? If it's a pharmaceutical related product for example FDC regulations come into play.
5. **Intellectual property risk factors:** Is your business open to intellectual property vulnerability if it does not implement appropriate protections such as patents, trademarks, service marks and the like?
6. **Competitive risks:** You may not always have an answer to your risk questions, such as the fact that no matter how much investment is made, the competitors are well established brands that a new company with a great product may simply not be able to compete against for market acceptance.
7. **Contractual obligations of the company and worst case scenarios if they can not perform:** such as a license agreement such as a license to use a famous cartoon character name or image to advertise, where if the company fails to perform, such as sell a certain volume of product with the image, the rights to the license may be limited or terminated and investors could lose their entire investment. Or if some scandal should occur around the cartoon character's image, it would damage your company.
8. **Risk of reliance on financial projections:** A general note for example: Any projections contained in this Memorandum or otherwise provided to potential investors are based on: (1) numerous estimates and assumptions that, while presented with numerical specificity and considered reasonable by the Company, are inherently subject to significant business, economic, competitive, and other uncertainties, many of which are beyond the control of the Company, and (2) assumptions with respect to future business decisions that may eventually change.

- If any of these assumptions or estimates proves to be incorrect, the projected results may not be achieved.
9. **Potential for factors beyond the company's control:** Again, a general note will suffice such as: As with any start-up company in the early stages of development, the Company is subject to potential problems, delays, and expenses due to factors substantially beyond the control of the Company, such as:
  10. **Risks of error in estimates of demand and customer acceptance, Risk of changes in technology, and Illiquidity of stock:** A general note will suffice.
  11. **Management inexperience:** Has the management team worked in the industry, managed your type of company, worked together before? If they haven't its okay, it's just another risk to disclose, and the information supporting what value the people bring is included in the business plan and in other parts of the memorandum.
  12. **Risk of need for additional financing:** The Company may need to raise capital in addition to that provided from the issuance of the stock.
  13. **Risk of investor when there are no dividends:**
  14. **Arbitrary price:** Disclose if the offering price is not based on the assets or book value of the business or other economic or recognized criteria of value and is not an indicator of any future market price of the Company's securities.
  15. **Investment highly speculative:** An investment in the stock must be considered highly speculative. You should carefully review all information regarding the Company provided to you and discuss this investment with your financial, legal or other business advisor(s).
  16. **Risk of type of securities, for example Unregistered Securities:** The lawyer would fill in the risks of the type of securities chosen.
  17. **Risks due to possible revision rights:** If an investor rescinds his investment what kind of risks emerge? The lawyer could also fill this in.
  18. **No market to sell the stock:** \_\_\_\_\_
  19. **Restrictions on transferability:** For example: Each purchaser of the stock will be required to represent that he or she is acquiring the stock for investment and not with a view to distribution or resale.
  20. **Tax Issues:** For example: The federal and state tax implications of an investment in the stock are complicated and the Company is not providing any advice to investors regarding such implications. You are urged to seek tax advice from your attorney or other advisors prior to investing in the stock.
  21. **Lack of Information:** For example: Since the offering of the stock is a nonpublic offering and the stock is only being sold to accredited investors, certain information that would be required if the offering were not so limited has not been provided to prospective investors. Thus, you will not have this information available to review when deciding whether to invest in the stock.

This is a sample list of risk factors to help get ready to prepare a private placement memorandum. It does not replace the advice of an attorney.