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# "The Key Business Plan Provisions" from The Entrepreneur's Intellectual Property & Business Handbook

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# The Key Business Plan Provisions

Jon M. Garon\*

This article is part of a series of book excerpts from [The Entrepreneur's Intellectual Property & Business Handbook](#), which provides the business, strategy, and legal reference guide for start-ups and small businesses.

## A. Key Provisions.

The basics of the business plan will flow directly from the sections of the book on the innovation, relevance, exclusivity, participants, sources of funds, and goals for both the owners and the entity. Business analysts often suggest that the failure to adequately plan the business is a leading cause of small business failure. This, along with weak management and poor financial planning, are the leading causes of the untimely demise of most start-up companies.<sup>1</sup>

Weak management and poor planning are both results of an incomplete understanding of the factors that affect success and failure. The process of developing a business plan will help educate the entrepreneur on critical questions regarding the start-up enterprise, greatly improving the chances of business survival.

### 1. *Understanding How to Organize the Writing of the Business Plan.*

The organization of the business plan should not follow the organization of the book, but instead tell the potential investor the story of the start-up and its future in a crisp, short story format. Good persuasive writing is organized backwards from thoughtful research and analysis. The business plan should reflect a scientific paper far more than a mystery novel.

To prepare a well-structured business plan, the entrepreneur should take on the role of a mystery novel sleuth or scientific principal investigator. A problem is identified, the participants are slowly introduced, and the tangled web of opportunities and false leads are explored until the solution becomes clear. This is the same structure for the detective novel, the scientific breakthrough, the planning of a start-up business, and the methodology for new product development.

The documentation of the final result, however, should not follow the same steps. The story of how the solution was crafted is not a compelling story for the investor. Investors, regulators, potential employees, and business associates do not desire a leisurely exploration of the world inhabited by the entrepreneur.

Instead, the model for a business plan should be modeled after the persuasive memorandum. It must begin with a thesis or goal statement that immediately identifies the goals of the start-up business. A summary should identify the exclusivity, the uniqueness, the relevance, and the stressors related to

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<sup>1</sup> Sharif Khan, *The Chief Cause of Business Failure and Success*, SHARIF KHAN BLOG (Apr. 2, 2005, 6:22 PM), <http://www.nationalbusiness.org/NBAWEB/Newsletter2005/2029.htm>.

the business. These factors are described in reverse order from their development because the author needs to convince the reader that the optimal solution has been developed.

Reversing the order allows the author to lead and persuade the potential investor regarding the path chosen. For example, there may be two or more patents that would each solve a market need in an equally successful manner. If the business plan identifies the need first, the reader may anticipate the other potential patent, a solution different than the one in the business plan. The plan thereafter will appear flawed to the reader because it does not solve the problem in the manner anticipated by the reader. Had the reader first been introduced to the business plan solution and then asked to agree that it solves the identified problem, the reader would have been less likely to speculate about alternative solutions and more likely to agree with the entrepreneur. If never thwarted, the reader is more likely to be engaged with the proposal.

The remainder of this section lists the components of the business plan in the suggested order—an order opposite of that used by the entrepreneur to create the business. These concepts are built into the traditional sections of the business plan. Business plans vary from company to company. They should be tailored to tell the persuasive story of that particular enterprise. Nonetheless, the sample plan provides a helpful suggested organization:

1. **Executive Summary**—1.1. Objectives; 1.2. Mission; 1.3. Keys to Success.
2. **Business Activities: Product & Services**—2.1. Services to be Offered; 2.2. Product Description.
3. **Market and Competitive Positioning**—3.1. Target Market; 3.2. Competitive Comparison; 3.3. Sales Literature & Advertising; 3.4 Sourcing; 3.5. Future Services.
4. **Strategy & Implementation**—4.1. Pricing Strategy; 4.2. Sales Forecast; 4.3. Strategic Alliances.
5. **Company Summary**—5.1. Company Ownership; 5.2. Start-up Summary; 5.3 Company Locations & Facilities.
6. **Management**—6.1. Organizational Structure; 6.2 Management Team; 6.3 Key Agreements; 6.4 Personnel Plan; 6.5 Decision Making Process of Management.
7. **Key Risks and Risk Mitigation Strategy**—8. Financial Plan; 8.1 Balance Sheet; 8.2 Equity Stakes; 8.3 Projected Income & Expense Report—Cash Flow and Profit and Loss.

The first four sections of the business plan emphasize the exclusivity, uniqueness, relevance, and innovation of the entrepreneur. The company and management sections focus on the personnel and decision-making processes. Marketing and market competition focus on the product's innovation and relevance, with a more general emphasis on the strategies for marketing. Finally, the financial plan provides the numbers necessary to demonstrate the plan has sufficient capital to operate, reasonable economic projections, and cash flow to allow the company to grow at a reasonable pace.

## **2. Introduction or Executive Summary—the Goal Statement or Story Lead.**

The executive summary should serve as the goals statement of the enterprise, much as a thesis statement frames the academic research paper. A second analogy is the lead paragraph of a newspaper story. It contains the entire story—who, what, when, and where plus a special emphasis on why. Appendix F provides a sample business plan. The sample included is not based on newly patented inventions, because these opportunities do not arise as frequently. Instead, the first example is based on the intersection of publicity rights and trademarks.

There are many different styles available to the business plan writer. The sample has an introduction and three short subsections: 1.1—Objectives; 1.2—Mission; and 1.3—Keys to Success.

The introduction provides both the “who” and the overarching goal statement. The mission provides the “what” of the business plan, and the objectives state the immediate “where” and “how” the business will proceed. The “Keys to Success” provides a bullet-point summary of the “why,” highlighting the exclusivity, relevance, and innovation that will be detailed in later portions of the business plan.

Unless the most important questions are answered on the first page of the business plan, few readers will turn to page two. Like good journalistic writing, the business plan cannot bury the lead—it must establish the strength of the business in its introductory section.

### **3. *Identifying the Exclusivity Afforded by the Business to Sustain Profit and Profit Margins.***

The “*Business Activities: Products and Services*” section of the business plan emphasizes the aspects of the business plan that provide the exclusivity. The section must identify the exclusive opportunities held by the entrepreneur. An analysis of the potential patents, trademarks and trademark licensing opportunities, trade secrets, publicity rights, and copyrights will illustrate the degree to which the business opportunity is exclusive and therefore unlike any others available.

The financial section will return to this theme by showing that the competition will have less ability to undermine price margins because the exclusive ownership of the intellectual property reduces the likelihood of adequate competitive alternatives in the marketplace. These exclusive rights may not all be in place prior to fully funding the start-up business, so the business plan needs to highlight them and demonstrate the potential to use funding to obtain these interests.

In the case of the sample business in Appendix F, the exclusive elements are the publicity rights provided by adopting the bicycle design innovation of a famous cyclist. This section would also feature any patents owned or applied for, research that is promising, or other exclusive attributes of the company. The plan should highlight how this solution will work. A second aspect of the section is a plan to cross-license the trademark opportunities. Again, this utilizes an exclusive trademark licensing arrangement to provide uniqueness and increase relevance for the business’s products or services.

### **4. *Providing Context—Relevance, Stressors and Innovation.***

The next section of the business plan puts the exclusivity into the context of the uniqueness of the solution. This aspect may be expressed through an analysis of the target audience and a competitive comparison of the marketplace. Although these sections may be quite comparable to the provisions in traditional market sections of business plans, it is important to highlight the context and the relevance of the opportunity presented by the exclusive solution through the business plan.

The “*Marketing and Competitive Positioning*” introduction provides an opportunity to contextualize the relevance of the product and identify the stressors that create the need for the new product or service. The section “*Sales Literature and Advertising*” can be used to further reinforce the stressors in the existing marketplace and how the start-up business utilizes targeted advertising and marketing literature to highlight the stressors and the solution to that tension through the start-up’s goods or services.

Depending on the type of business, some plans may need to provide a much greater amount of general context. A business plan based on a medical device patent, for example, would require significant information on the Food and Drug Administration process for approving the device as well as that process’ impact on the patent application. It may also be critical to discuss the extent to which federal Medicaid or Medicare would cover the device and the potential issues for health insurance. These stressors and external factors will determine the success or failure of the proposal,

so each must be addressed. The demographic changes that are a key stressor for so much innovation should also be mentioned in most business plans.

Not all the stressors are under the control of the business. Nonetheless, each significant stressor should be described. In the example of a medical device business, the plan should include a statement explaining that the success or failure will be conditioned on human trials and FDA approval of the product. Sophisticated investors and lenders understand these external factors. Failure to address them suggests the entrepreneur is naïve, disingenuous, or both. A persuasive document recognizes the weaknesses in its argument and acknowledges the limitations inherent in the thesis. It argues that these weaknesses are overcome by its strengths. A document that does not acknowledge its weaknesses cannot be credible in claiming it has overcome all objections. To be persuasive, the business plan must be comprehensive and candid.

For the entrepreneur drafting a business plan, questions about the relevance of the product or service to the target market, the innovation provided to solve the stressors, and the uniqueness of the solution offered should be used as a litmus test for each of the business plan's provisions. If the business plan drifts off these central themes, it will lose its persuasive impact.

### **5. *Another Approach: The Patent Plan—What is New, Useful, and Nonobvious.***

A patent metaphor can serve as an alternative organizing principle for the business plan. The attributes of new, useful, and nonobvious can be combined into the description of the start-up's "*Business Activities, Market Analysis,*" and "*Competitive Strategy.*" What is new is described in the business activity section because the company's innovation is the key to the plan's success. The market analysis reflects the utility of the new business. If the business is not useful, it should not be funded. If it does not increase efficiency or add social relevance for the consumer, then the business should not be launched. Finally, the nonobvious nature of the plan should be addressed.

The business plan should also explain why the model will not be immediately replicated by competitors. Unless one of the intellectual property disciplines provides exclusivity, even a successful plan will be replicated into oblivion.

## **B. Rounding Out the Business Plan—Disclosures and Other Provisions.**

### **1. *Identifying the Leadership and Key Personnel.***

Identification of key personnel and providing resume information is an essential aspect of the business plan and one that many investors read first. The names of the key personnel should be in the executive summary. A delay in identifying the "cast" will leave the readers wondering if something is amiss. The placement of the key personnel provision is not critical to the success of the business plan as long as the names are listed in the introduction. For a persuasive organizational style, the personnel provision should serve as the introduction to the financial planning section unless the personnel are directly responsible for the exclusivity of the proposal.

If the business plan is built around patents held by the primary business owner or the publicity rights of the company spokesman, then that role should be mentioned in the Business Activities section immediately after the executive summary. The entire resume of that individual need not be provided at that point, merely the attributes that make the person central to the success of the venture. Of course, if every principal is famous and the real value of the venture is to bring the strongest professionals in their respective field in an effort to let them be creative and successful, then the business plan really is merely the resumes. Such models generally fail, however, so there should be

innovation based on relevance and supported by exclusivity rather than mere reliance on experience. As long as the principal individuals are competent and somewhat experienced, the focus on relevance and exclusivity will keep the business on track and competitive.

## **2.     *Management Goals and Investor's Liquidity Strategy.***

The business plan should also make the time commitments of the key personnel clear, as well as the expected time frame and exit strategy for the financing. Investors want liquidity and lenders want the return of their principal. Business plans are provided to lenders as well as investors; the goal is not necessarily to have a ten-fold return on investment in eighteen months, but to provide a realistic statement of the timing goals.

Unfortunately, the drafting of the business plan is often the first time the key personnel have addressed issues regarding timing and shared expectations, so it also serves a critical internal purpose of committing the participants to an explicit shared vision. Founders must invest the time and effort to come to an internal agreement about these targets to avoid conflict later in the operations of the business.

### **3.     *Articulating the Business Operations: Getting it Done.***

The next element necessary for any business plan is an explanation of what the company will do to accomplish its operational goals. A description of the start-up's capacity to deliver the goods or services is the first aspect of this section. While much of this information may be uncovered in the financial projections, the business plan must address these obligations directly.

Employment agreements that incorporate nondisclosure and noncompetition provisions are one aspect of intellectual property that helps entrepreneurs meet this goal. These contracts assist the entrepreneur in protecting business operation know-how while still expanding the staff to meet the business's growing needs.

Of course, employment contracts do not substitute for the underlying knowledge necessary for the operation to work. The entrepreneur must be able to manufacture goods, provide a service, or sell a product. Without the ability to deliver the products or services to the customers, the business cannot succeed, no matter how brilliantly conceived.

If the cost of manufacturing exceeds the anticipated revenue cost per item, the business has failed before the first investor's packet leaves the printer. If the business relies on a technology which is not available for licensing, then the project should be shelved until that technology is freely available in the public domain. These are not idle suggestions. During the height of the dot.com boom, even companies that could not answer these preliminary questions received venture capital based on the irrational exuberance of the era. That era has passed, however, and present investors and lenders expect more concrete answers.

In addition to the operations side of the equation, business plans tend to focus heavily on the marketing and sales aspects of the plan, emphasizing relevance to the target audience. Marketing sections in the business plan highlight the need for the entrepreneur to understand and carefully identify the target audience for the launch of the product or service. While it can be appropriate to expand that target audience as the product meets market success, the initial focus should emphasize the greatest market opportunity. Thereafter, continuing research should include an assessment of the consumer make-up so that the target audience can be refined to maximize efficiency and return.

The marketing plan can provide a detailed strategy for website marketing, print advertising, direct mail, radio and television advertising, product placement opportunities, trade association opportunities, and other advertising and publicity opportunities. Again, the need to identify the target audience is crucial because different target audiences are served by different media. Each market segment researches and purchases products very differently from other market segments, basing its assessment on geography, age, affinities, professions, and ethnicity. This information may inform the trademark and branding strategy as well.