CRITICAL LEGAL ISSUES FOR EARLY STAGE COMPANIES

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Overview

- Why Start a Business
- How to Collect Assets - Founders Agreements
- How to Grow Assets - Employees and Consultants
- How to Sell Assets - Customers and Distributors
- How to Protect Assets - NDAs and Non-Competes
Why Start a Business

- Limitation of Liability
- Shared Ownership
- Singular Ownership of Assets
  - Especially important for IP assets
Entity Types

- **C-Corporation**
  - Common structure, with well defined governance regulations
  - Not very flexible
  - Tax disadvantages

- **Limited Liability Company**
  - “Pass-through” entity for tax purposes
  - Difficult to provide equity incentives
  - Not favored by investors

- **S-Corporation**
  - “Pass-through” entity
  - Particular requirements must be met
Founders Agreements

• Bills of Sale
  • Get all founders’ contributions into the Company on day one.

• Stockholders Agreement: Keep shares in the hands of those continuing to add value
  • Vesting relating to term of service (83b’s)
  • Right of first refusal
  • Restrictions on the transfer of stock
  • Process for breaking deadlocks
Growing Your Assets

- Employees
  - Assignment of Inventions - keep track of exempted IP
  - Pay Minimum Wage (Really!)

- Contractor Agreements
  - Beware! Default is for Contractor to own his own work
  - Compensate them Fairly

- Beware Interns
Financings

• Other People’s Money

• Investors are helpful, but are not your friends

• Understand financing terms
  • Ask questions
  • Think about impact on future rounds
  • Be realistic
Sales

• Do not License IP without a Contract
• Software - Can it be distributed as SaaS?
• Distribution Agreements
  • Do they speak for you?
  • Beware exclusivity
• Time to think about Branding
Use Protection

- Non Disclosure Agreements
  - Broad or Narrow
  - Exceptions
  - Term (consider trade secrets!)

- Non-Competes
  - Think early or Pay late
Final Thoughts

- Founders - Don’t assume you’re all in it together.
- Consultants - Beware anti-dilution requests
- Employees - Don’t let it get out of control
- Investors - Don’t get bullied
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