CRITICAL LEGAL ISSUES FOR EARLY STAGE COMPANIES

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Who am I?

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Overview

- Pre-Formation Issues
- Capitalization
- Stockholders’ Agreement / Vesting
- Incentivizing Employees
- Preparing for Financings and Exits
Key Pre-Formation Issues

- Structure of Entity?
- Who are the owners?
- What are the founders’ responsibilities?
- What work product goes into the business?
Capitalization

• Equity / Cap Table
  • Need to get this right up front, and keep meticulous records going forward.
  • Construct a pro-forma capitalization, showing how the stock is to be allocated among founders, employees, expected investors, etc.

• Who is investing? How much? Type of investment (cash, services, property)?

• The company is not your piggy bank
Stockholders Agreement

- Goal: 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
  - Voting for specified directors
  - Process for breaking deadlocks
Incentivizing Employees

- Pay Minimum Wage (Really!)
- Restricted Stock and Options
- Beware Contractors and 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
Selling the Company

- Find (and use) good advisors
- Be organized and understand company sale is a full-time job
- Be comfortable with amount paid at closing
  - Earn-outs are always risky
  - Don’t plan on staying around for long