

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