

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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