

RIMON

Top 10 Things Your Startup Lawyer Should Tell You

Dror Futter, Partner

Dror.Futter@rimonlaw.com



Disclaimer

Tell me you did not see this coming ...

- **Disclaimer**

This presentation and these materials are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. The opinions expressed in this presentation are those of the author alone and may not reflect the opinions of the firm or any other attorney.

1. I Represent the Company – Not You

- When the Company and the Founders' interests diverge, the Founders should seek their own counsel
- Your attorney has an ethical obligation to inform you of any conflicts
- You should understand the Attorney-Client Privilege

2. Form a Delaware C Corporation

- Why in Delaware?
- Why not an LLC?

3. Do You Know Who Owns Part of Your Company?

- Make sure that all equity sales/grants are properly authorized and documented
- Never informally accept funding or promise equity
- Unless done right, employee equity grants can have bad tax consequences
- Share Classes
 - Founders/Employees generally get **Common Shares** – **There is Nothing Great About Founders Stock, They Make Up in Quantity What They Lack in Quality**
 - Investors generally get **Preferred Shares** w/enhanced rights:
 - Convert to Common Shares on Exit
 - Anti-Dilution Protection
 - Dividend
 - Liquidation Preference
 - Voting/Control Rights
 - Board Seat

4. You and Your Co-Founders Need an Agreement – Like Yesterday

- Control
- Economics
- Responsibilities
- Departure/Termination Scenarios

5. You Can't Hire an Individual as a Contractor

- All because you call someone a contractor does not mean that legally they are viewed as a contractor
 - Failure to properly classify an individual as an employee can result in significant liability
- Except in very narrow circumstance, can't pay an individual on their Social Security Number by 1099
- Myth that it is harder to fire an employee than terminate a contractor
- Unpaid internships are coming under increasing scrutiny

6. You Can't Pay for Everything You Can't Afford With Equity

- Minimum Wage Laws
 - Applies to all employees except 20%+ owners and possibly executive management
- Potential Taxes on Equity Grants
 - Stock options versus restricted stock

7. Handshakes Work Really Well ... Until They Don't

- Document, Document, Document – verbal agreements always come back to haunt you
- Agreements do not have to be 48 page documents. Examples of agreements:
 - PO's
 - Letter of Intent or Memorandum of Understanding (unless expressly non-binding)
 - Order Acknowledgements
 - Clickwraps/Shrinkwraps
- Silence is Not Golden – in some circumstances if your agreement does not cover a topic, the law implies terms

8. Your NDA Likely Won't Save You

- At most an NDA is a ticket to a courtroom
- If you have to sue to enforce your NDA, even if you win in court, you've likely lost
- Pick your partners carefully
- Tier your disclosures so that secret sauce information is only disclosed once the relationship has deepened and trust has developed
- Limit the permitted circle of disclosure

9. Don't Spend Money on Branding Until You've Checked Out Your Trademark

- Before you spend significant time and expenses on branding, you should conduct a trademark search to verify that no one else is out there using the mark
- Search costs are much cheaper than the cost of changing your brand if it turns out that someone has superior rights to the mark
- Descriptive phrases are poor trademarks/arbitrary phrases make strong trademarks
- Free tip – start using **TM** today

10. Not Every Great Idea is Patentable

- Not every good business idea is patentable. In the US patenting software and business methods are particularly difficult. This is definitely something that should be discussed with patent counsel.
- The U.S. is now on a first-to-file patent system
- In addition, if you disclose an invention, you have 1 year in which to file the corresponding patent application
 - Any public disclosure before a patent filing may prevent foreign filings
- Provisional Patent Applications are a relatively inexpensive way to preserve patent rights in the US
- PCT Filings give you a path to global protection
- **Make sure you have agreements with all employees and contractors requiring them to assign IP rights to the company**

Bonus: Never Spend Your Bank Account Down to Zero

- Payroll & Tax Withholding – 2 Things You Never Want to Forget
 - In the US, potential personal liability for officers and directors of companies who fail to pay wages or make necessary tax payments

Some Additional Resources

- Book: Venture Deals: Be Smarter Than Your Lawyer and Venture Capitalist, by Brad Feld and Jason Mendelson
- Form Documents:
 - <https://nvca.org/model-legal-documents/>
 - <https://www.seriesseed.com/>¹
 - <https://www.ycombinator.com/documents/>
- My articles: <https://www.linkedin.com/pulse/dror-futter-venture-capital-articles-dror-futter>

1. Not commonly used

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Thank you.

Dror Futter, Partner

Dror.Futter@rimonlaw.com