

Start Smart Law: Building and Leveraging Your Professional Team

Kit Needham

Assistant Dean for Entrepreneurship Initiatives

Director, Project Olympus

Carnegie Mellon University

Swartz Center for Entrepreneurship





Start with Your Lawyer



What to Look For

- **Type**
- **Domain Experience**
- **Price**
- **Affinity/Chemistry**
- **Belief in Your Idea**

TYPE

**HBR: Top 10 Legal Mistakes Made by
Entrepreneurs**

#8 – Hiring a lawyer not experienced in dealing with entrepreneurs and venture capitalists.

**Ask: “How many start-ups have you worked with? Can I talk to them?”
“What other types of lawyers will I need?”**

Start-Up Experience

Startup lawyers know how to do this.

Litigation attorneys, family lawyers, etc. probably won't.

	Example 1 \$250,000	Example 2 \$250,000
	Priced Round	Conv. Debt
Founder	41%	46%
Employees	7%	8%
F&F	12%	6%
Series A	<u>40%</u>	<u>40%</u>
Total	100%	100%

Domain Experience

- **Software?**
- **Medical Devices?**
- **Manufacturing?**
- **Target Market/Customers?**
- **Federal Government?**

Ask: “Have you worked with other startups like mine?”

Price

- Hourly Rates vs Flat Fees for a bundle of services
- Deferred payment
- Rates/options for services such as copies

Ask:

“What type of legal expenses can I expect?”

“Do you offer packages?”

“Will you consider deferring charges?”

Affinity/Chemistry

- Are you comfortable asking questions?
- Do you communicate well?
- Do you 'get' each other?
- Are your questions being answered?

Ask: "How do you feel about working with students?"

Belief in Your idea

- **Do they display interest and enthusiasm?**
- **Did they do any research before meeting you? (if you briefed them on your idea)**
- **Do they buy into your vision – believe in what your company is all about?**

Ask: “What do you think of the potential for my idea/business? Any initial thoughts?”

Other Questions*

- **What percentage of your practice over the last few years has been startups?**
- **How many startups began with you and remain with you after having revenues of or having raised more than \$1M?**
- **How many investment deals have you brokered recently?**
- **What was the smallest investment? The largest?**
- **Do you charge for attending board meetings?**
- **What clients can I talk to about your representation?**

**From "Startup Briefs" by Babs Carryer*

TIPS – Managing the Relationship

- Read and understand Letter of Engagement – it's your job
- Negotiate – okay to discuss changes to the Agreement
- Ask if you can talk to one or two clients who are similar to you

Tips – Managing Costs

- **Decide whether you want to pre-approve payment for copies, telephone calls...**
- **Ask that projects and budgets be defined before work begins**
- **Magic Write-In: “Until notified by client, all billing costs for work to be completed must be discussed in detail and agreed upon in writing by both parties and pre-approved before work begins.”**

TIPS – Being a Good Client

- **Don't defer payments too long.**
- **Consider paying a minimum retainer.**
- **Read and understand the documents**
- **Pay your bills on time.**
- **Do some research on your own by Attending Start Smarts or using other Olympus/IPI Resources**

Firing a Lawyer

- **Stops being accessible OR responsive.**
- **Overcomplicates contracts and negotiations**
- **Sloppiness, errors – can happen over time.**
- **Frequently last minute**
- **Charges exceed quoted amount or show up unexpectedly**



Advisors, Boards and Service Providers

The role of Directors and Advisors are different

- *Directors support your obligation towards proper corporate governance.*
- *Advisors provide support without any fiduciary responsibilities or liabilities*



What is an advisor/advisory board?

An individual or group of individuals who help management move their business forward.



Why do I need an advisor?

- *Functional support*
- *Emotional support*
- *Access to financial investors*
- *Access to customers*

Why do advisors do it?

- *Goodness of their heart - they believe in you*
- *Stay involved in the field or a business at your stage*
- *Cash money and/or equity*
- *Create a job for themselves*

Advisors/Mentors vs Advisory Team

- Advisors/Mentors/Coaches
 - Volunteers who give you advice on an as-needed basis
 - No fiduciary responsibility
 - Diverse background – legal, PR, domain, financial
 - Not paid – think of them as mentors/coaches/experts
- Advisory Team
 - Volunteers who give advice on a regular basis
 - Can give investors confidence
 - May get equity but generally under 1% and vests over time
 - No fiduciary responsibility

Keeping Advisors Informed and Engaged

- One-on-one meetings (time-consuming but best for sensitive or complicated issues)
- Periodic Advisory Team meetings
 - Requires more organization
 - Helps to avoid 'mentor whiplash'
- Email Updates
 - Every two-four weeks
 - Include other founders and employees
 - 3-4 bullet points
 - Can include an "ask"
- "Managing" your advisors

What is a Board of Directors?

- *A fiduciary obligation required by your Articles of Incorporation.*
- *Explicitly represent the interests of your shareholders.*
- *Have a real exposure to corporate liability.*

Why do you need a Board?

- *Legal requirement for Incorporation.*
- *Adult supervision - keep you out of the weeds as you make key decisions.*
- *Fundraising and Business Development support.*

Why do folks join your Board?

- *Contractual right to a Board seat*
 - *You as the entrepreneur*
 - *A financial investor*
- *Independent*
 - *Provides key access to interesting opportunity*
 - *Mission orientation*
 - *Get cash money and/or equity*

Board of Directors

- Boards
 - Fiduciary responsibility (e.g. legal)
 - Obligated to do what is best for the company and shareholders
 - Tip: Keep it small
- Board responsibilities
 - Hire and fire the CEO
 - Approve strategic direction
 - Assess benefits and risks of the company's activities
 - Help with raising funds
 - Help find customers

Service providers

- Accountants, attorneys, bankers etc. are NOT employees
 - Generally should not be board members
- Attorneys formally incorporate the company
 - Also provide boiler-plate docs, patent/IP work
 - Remember: they work for the company, not you
 - You will eventually need a personal attorney
- Payroll is almost always outsourced



Appendix

Top 10 Legal Mistakes Made by Entrepreneurs

HBR: March 3, 2003

- 5. Waiting to consider international IP protection.**
- 4. Disclosing inventions without a nondisclosure agreement, or before the patent application is filed.**
- 3. Starting a business while employed by a potential competitor, or hiring employees without first checking their agreements with the current employer and their knowledge of trade secrets.**
- 2. Promising more in the business plan that can be delivered and failing to comply with state and federal securities laws.**
- 1. Thinking any legal problems can be solved later.**

Top 10 Legal Mistakes Made by Entrepreneurs

HBR: March 3, 2003

- 10. Failing to incorporate early enough.**
- 9. Issuing founder shares without vesting.**
- 8. Hiring a lawyer not experienced in dealing with entrepreneurs and venture capitalists.**
- 7. Failing to make timely Section 83 (b) election.**
- 6. Negotiating venture capital financing based solely on the valuation.**

Advisor Compensation

Advisor Performance Level	Stage		
	Idea Stage	Startup Stage	Growth Stage
Standard	_____ (0.25%)	_____ (0.20%)	_____ (0.15%)
Strategic	_____ (0.50%)	_____ (0.40%)	_____ (0.30%)
Expert	_____ (1.00%)	_____ (0.80%)	_____ (0.60%)

Both parties must initial in one box to designate the Advisor Compensation. Percentages shall be based on the number of outstanding shares of Common Stock of the Company, calculated on a fully-diluted basis of all outstanding and convertible or issuable securities as of the date the Board of Directors approves the foregoing equity compensation. The exact number of shares shall be provided in the definitive document which shall supersede this provision.

Type of Security:

_____ Option to purchase Common Stock or
_____ Restricted Common Stock

Both parties must initial in one box to designate the Type of Security.

Total Number of Shares of Common Stock:

_____ shares so long as Advisor satisfies the Performance Level of Service as checked above*

If the Company's capitalization structure is currently unknown, fill in 'TBD' above.

From the
Founders
Institute



Kit Needham

kit@cmu.edu

cmu.edu/olympus

