

Legal Issues Facing Early Stage Companies

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Outline

- I. Organizational**
- II. Capitalization and Securities Issuances**
- III. Intellectual Property**
- IV. Employment**
- V. International Expansion**

I. Organizational

- Choice of entity
 - corporation, partnership, limited liability company
 - new corporate forms
 - hybrids
 - L3C
 - Flexible Purpose Corporation
 - For Benefit Corporation
 - state of incorporation

II. Capitalization

- Common stock, preferred stock, options and restricted stock
- 83(b) elections
- Valuation
- Securities law compliance

III. Intellectual Property

- Patents
- Trade secrets
- Trade marks
- Copyrights

IV. Employment

- Compensation
- Stock options
- Protecting IP
- “Poaching” from competitors
- Employees vs. independent contractors

V. International Expansion

- Deciding to expand offshore
 - when to consider
 - legal infrastructure must precede
- Importance of Delaware
- New entity or not
- Tax ramifications of transferring IP or other assets offshore
- Foreign securities laws and foreign labor and employment laws

Most Common Mistakes

- Selecting an inappropriate form of legal entity
- Failing to properly maintain corporate records
- Failing to adopt an appropriate stock incentive plan
- Missing an 83(b) election
- Creating stock valuation problems
- Selling securities to unaccredited investors
- Failing to obtain good title to intellectual property
- Failing to properly license technology protected by others
- Failing to protect trade secrets
- Incautiously hiring former employees of a competitor
- Misclassifying employees as independent contractors
- Following an undisciplined fundraising approach