

# THE STARTUP LEGAL CHECKLIST



## Starting

### Incorporation

- Review all agreements with former, current employer(s) (e.g., confidentiality, invention assignment, non-solicitation, non-compete)
- Conduct a basic trademark search on company name (Is it distinctive? Likelihood of confusion?)
- Form a Delaware C-Corporation (*not* an LLC)
  - Authorize 10 million shares
  - Issue 8 million shares to founders (5 million if adding more founders)
  - Set par value at \$0.00001 per share
- Use generally accepted incorporation forms prepared by startup lawyers (e.g., bylaws, stock restrictions agreements, etc.)
- File foreign qualifications in the states where company is doing business (Colorado)
- Split equity decisively
- Founders pay cash *and* assign company-related IP for their shares
- Founder shares vest over time (4 years with a 1 year cliff)
- Founder vesting accelerates upon sale of the company (single or double trigger)
- Founders file an 83(b) election with 30 days of receiving shares
- Founders sign Confidentiality & Invention Assignment agreements
- Setup founder-only board
- Board elects officers (President, Secretary, Treasurer)
- Prepare and issue electronic stock certificates (eShares)
- Secure a Federal Tax ID number (EIN) from the IRS
- Open a separate company bank account and keep personal and business finances separate
- Hire an accountant



## Growing

### Human Resources

- All employees and contractors sign Confidentiality & Invention Assignment agreements
- All employees are due minimum wage (20% exception)
- Classify employees carefully
  - Not everyone is a consultant
  - Not everyone is exempt from overtime
  - Unpaid interns (6 factor test)
- Define all employees as “at-will”
- Document employee misbehavior
- Consult with lawyer on all terminations
- Use non-competes sparingly (in Colorado)

### Stock Options

- Adopt a stock option plan upon an equity financing, meaningful revenue, or other increase of valuation
- Allocate enough shares to the plan for the next 12 months
- Use market studies to determine how many option shares to grant (e.g., advisors 0.15 - 1.00%)
- Set exercise price on option shares based on FMV (409a)
- Consider granting NSOs only
- Option shares should vest over time
- Carefully consider post-termination exercise periods

### Contracts Generally

- Good contracts, (like good code), are clear, precise, efficient, and do what they are intended to do
- Be careful of creating contracts orally, via IM or email
- Always be *due diligence ready*

### Intellectual Property

- All founders, employees, and contractors sign Confidentiality & Invention Assignment agreements
- File trademark registrations for brand names
- File copyright registrations for works susceptible to copyright infringement
- Provisional patent applications can be a less expensive way to start the patent process (patent pending)
- Understand implications of using open source software



## Funding & Exit

### Funding

- Not DIY – the laws in this area are complex and the penalties for noncompliance are severe
- Raise money from accredited investors
- Do not pitch publicly (e.g. Twitter, website)
- Do pitch privately with 15-20 slides, not a full biz plan (see Sequoia Capital business plan)
- Do not pay finder’s fees
- Convertible *equity* (not debt) is the current ‘state of the art’ for seed financings
- Understand ‘high resolution fundraising’
- Use generally accepted funding forms: Y Combinator’s SAFE, 500 Startups’ KISS, Series Seed, TechStars’ Series AA
- Understand funding alternatives (e.g., crowdfunding, Kickstarter, revenue financing)
- Use an investment term sheet to facilitate negotiations and investor coordination (blueprint of the deal)
- Identify economic vs. control issues (read Venture Deals)
- Build a model in Excel to understand the economics of the deal
- Be stingy with board seats understanding that the board can fire the founders
- All directors, officers complete bad actor questionnaires
- File Form Ds with SEC and applicable state divisions of securities

### Exit

- Be *due diligence ready* as time kills all deals
- Negotiate letter of intent (term sheet) vigorously as leverage usually decreases over time
- Be very wary of no shop clauses > 60 days
- Build a model in Excel to understand the economics of the deal
- Structure the deal to optimize for tax (stock vs. asset sale)
- Clearly communicate priorities to lawyer so negotiations are focused on the issues that matter