Legal Issues Facing Early Stage Companies

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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