



Virginia Business Lawyers

Point Number 10 on How To Pursue Venture Capital

By: Thomas L. Bowden, Sr. *This was posted Friday, April 1st, 2011*

Hire a really good [lawyer](#) who knows the ropes. In our last post, we covered [dividing up the responsibility for work and success](#). This time, let's talk about a crucial team member: your lawyer.

Seriously. I know it sounds like a pitch, but I am sincere. Of course we hope that you will hire [North Carolina corporate attorneys](#) and [Virginia business lawyers](#) from Sands Anderson, but even if you don't, make sure that you find an attorney who has experience in these matters. I can give you several good reasons.

First, if your business is worth investing in, then you probably have your hands full - or you are excess baggage. You should either be closing your next sale, getting your next-generation prototype to work, or hiring a replacement for the engineer who left suddenly, leaving a critical project is completed. You need to delegate.

If you're capable of getting a venture capitalist interested enough to give you a [term sheet](#), you're probably bright enough to learn all the ins and outs of VC financing structure. But that doesn't mean that you should. As we discussed in Point Number 8, the VC [capital structure](#) model, while elaborate, really doesn't change much from deal to deal. The parameters may change, e.g. the pricing, compensation levels, vesting schedules, liquidation preference factor, etc., but the essential structure of the deal follows a tried and true path. If you really want to reinvent the venture capital business model, you'll have a lot more luck after you have successfully IPO'd your company. Until then, you will be wasting your time trying to reinvent a wheel that's already round enough.

Another reason you should hire a good lawyer, is that no right-thinking VC will invest in the company that is not represented by competent counsel. It raises too many questions. It also puts an extra due diligence burden on the VCs and their lawyers. They need to know that everything is where it needs to be, the corporate records are up to date, patents have been filed, and all of the outstanding stock has been properly authorized and issued. In answering these questions, they get

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lots of comfort from having a law firm on the other side of the deal issue a legal opinion. Even if you could give such a legal opinion, it wouldn't be worth much unless you have a legal malpractice policy of your own.

Good [venture capital lawyers](#), with many of these transactions under their belt, are more likely to pick up on subtle cues or wrinkles in the deal. They may be able to anticipate where a venture capital firm will give way on one point, and use that to your advantage to protect you on another point. If you or your attorney haven't done these deals before, you won't know where the trade-offs are. You could easily give away too much to obtain something that the venture capital firm didn't really care that much about. In other words, there's no substitute for experience. Related to that is that a good venture capital lawyer will stay up to date on "market" deal terms. If the VC is asking too much, your lawyer should know that. If they haven't done enough deals, they would have nothing to compare to. Depending on the state of the economy, the scarcity of capital, the state of the market for IPOs or strategic acquisitions, venture capital deal terms will change, just like the price of the stock fluctuates in the public market. The difference is that with private companies, it's not as simple as a quoted price. Take a look again at the term sheet referred to in Point Number 8. There are many knobs to turn and switches to flip.

Finally - you will need good counsel. Issues may arise that you cannot or should not discuss with your employees. You may question why the VCs are asking for a specific term or a piece of information, and your partners or employees will not know the answer. You will want to know if the VC is being too aggressive, or if their body language suggest that you can get better terms. Here again, experience is the key. Good venture lawyers have a "sense of the deal" that develops only with time and deal flow. They can also come up with creative solutions that you would not think of. Almost every deal threatens to run aground over some issue in the process between term sheet and funding - but there is almost always a solution. In negotiating deals, as in navigating rivers - It's good to have an experienced pilot who knows the shoals, the rocks and the currents.

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