

Finding Your Startup Lawyer: What Every Entrepreneur Should Know

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Successful management of any new enterprise, regardless of industry, is a process demanding of concerted effort to realize opportunity with a finite set of resources. As an entrepreneur, perfecting your vision, securing and managing funds, building a team, marketing and selling, and executing on plan, all while navigating unexpected obstacles, likely occupy your every day. At the core of whether you can succeed is whether your principal team has not only the requisite ability and experience, but the support in place to sustain it. This support, typically, derives from academic advisors, industry experts, professional consultants, and, eventually, from investors.

From whom you choose to seek advice, including from which startup lawyer, will significantly impact your progress. To assume that any corporate lawyer—and there are many able ones out there—can meet the demands of your business need not be one of your early fails. The right lawyer for your startup will not purely be a legal advisor but a strategic one—that is, an integrated teammate who is uniquely prepared to support your mission.

What makes a particular lawyer worthy of this role? A set of professional skills and personal attributes that combine with your own in just the right balance to drive success. Whether this lawyer is with an outside law firm or in house as part of your core team, our collective experience across both roles reveals a strikingly similar skillset. What, precisely, do these skills look like? You may be surprised to learn that the most predictable is, in fact, not necessarily the most impactful.

1. Risk Management

If your first contact with a lawyer is prompted by risks associated with your business, such as how to document equity owned by the founders, protect intellectual property, or engage human resources, then you are not alone. It is this expectation of risk management that creates what is, in theory, where the value of the lawyer's contribution to your startup lies. It is, of course, imperative that your lawyer be prepared to identify, analyze and recommend steps to eliminate or, at the very least, mitigate risk.

If your startup is highly data driven, for example, your lawyer must not only understand the applicable legal and regulatory framework around the collection, storage, use, and/or sale of the particular type and form of data but, likewise, the related risks and remedies, if any, that may be employed to avoid them. There are multiple means of managing risk, such as through informed decision making, contract drafting and liability insurance, but before risks can be addressed, they must first be identified.



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You absolutely need to be able to look to your lawyer for input into cost-benefit analyses relative to legal risks to your business. Ideally, you will want to choose a lawyer who has experience with companies similar to your own, either in terms of industry or issues, including having worked on the types of transactions you expect to engage in. Contrary to popular belief, however, understanding and analyzing legal risk is not the only, nor is it even the most beneficial, skill that the right lawyer will bring to your startup. It is, more specifically, the lawyer who is able to adroitly shift between advisor on risk to participant in solutions from whom you will derive the greatest value. This agility is as much a mindset as it is an expertise.

2. Partnership

Your choice lawyer may be an individual attorney or a law firm, but, in either case, you should expect and receive consistent proof that your legal counsel is an engaged member of your team. Whether a lawyer (or firm) inwardly identifies as “your business partner” will noticeably manifest, in both character and actions.

Your lawyer should be ready, for example, to support the business through creative and flexible billing practices, including offering alternative fee arrangements, such as a discounted hourly rate or fixed fee per project; estimating legal fees before commencing work; or deferring collection until your startup has realized a certain amount of revenue or capital. Willingness to experiment with such measures demonstrates that a lawyer is “on your side” by supporting your financial goals, despite the risk, and taking a long-term view of the relationship—in effect, making an “investment” in you and displaying confidence in your business’s likelihood of success.

The lawyer who thinks like a partner will consistently demonstrate that he or she cares and can be depended upon. You should feel valued after interactions with your lawyer, regardless of his or her workload, and confident that you and your business will take priority at the appropriate times. Your lawyer should be reliable and responsive, promptly returning phone calls and emails; mindful of your timeline; and able to deliver work product on time and within budget. You should never be left to worry that more mature businesses, which are larger paying clients, will monopolize the attention of your lawyer.

Perhaps the most meaningful attribute and indicator that a lawyer is prepared to be an effective teammate is a genuine interest, not simply in the business but in you as a person. The right lawyer will take the time to get to know you—your personality, your leadership style, your expectations, your work routines, and even your communication preferences—and proceed to accommodate them. In cases where you expect help analyzing risk but prefer to make the final decision yourself, your lawyer should facilitate that, by guiding you through pertinent pros and cons; but, in cases where you, instead, prefer a definitive opinion, your lawyer should provide one.

Say, for example, that you are a first-time entrepreneur negotiating a term sheet for an initial round of financing, and, with negotiations faltering, you ask your lawyer whether he or she would sign the term sheet “as is.” If your lawyer understands you to have a need for clear and concise guidance around integral business decisions, your lawyer must be able to provide you with a “Yes” or “No” answer, and not an exhaustive recitation of terms. You will likely desire some balance between

analysis and opinion from your lawyer, and where he or she is adeptly able to gauge which one you prefer and when, you have forged a strong partnership.

3. Collaborative Communication

Being a good communicator is essential to being a good lawyer, partner and problem solver, especially when navigating the bumpy terrain of a startup. Your lawyer should, therefore, routinely be asking incisive questions about the particular business issue, goal, or transaction at hand. How else will he or she be able to clearly comprehend what you are looking for, what you care about most, and, alternatively, what you may not think is important? It is only through asking questions that your lawyer can construct and tailor recommendations that are both sound and relevant. After all, your business is not a hypothetical, and legal advice should never be delivered to you in a vacuum.

While posing the right questions is a necessary first step toward effective communication, your lawyer should not stop there. It is equally imperative that he or she pay careful attention to your answers. Only through active listening will your lawyer be able to understand the broader context within which your specific need has arisen. If, for example, you ask your lawyer to review and interpret a contract, the advice that you receive will be most useful to you when generated from a clear understanding, not only of the proposed transaction, but, more specifically, of your objectives and leverage relative to those of the counterparty to the contract.

Returning to our example above, if you are a first-time entrepreneur engaged in collapsing negotiations for seed financing and looking to your lawyer for guidance on whether to sign the term sheet “as is,” only if your lawyer has been carefully inquisitive might he or she know, for example, if you have spent months chasing financing, have received only this one offer, and are increasingly concerned over the resulting delay in technology development. Advice appropriately shaped by these facts would include a shift in focus toward negotiating a smaller subset of your most important issues (perhaps even just one or two) in order to make sure that a deal gets done as quickly as possible.

4. Practical Advice

Although many of the questions that you will pose to your startup lawyer will have complicated answers and, thus, require detailed analyses, you, typically, will need a succinct response. While a lawyer can spend a lot of time over email or on the phone with you summarizing relevant issues and describing the review conducted to reach his or her conclusion, this propensity is contrary to the startup reality. Time is money, and you are, no doubt, both busy and cost conscious. It stands to reason, then, that the more compatible lawyer is the one who is able to “cut to the chase.” While your lawyer should be able to work back to the analysis supporting his or her conclusion, in the course of discussing your questions, practicality dictates that the lawyer should lead with that conclusion, offering a recommendation at the outset.

As an entrepreneur, most likely with a business or technical background (rather than a legal one), you should expect your lawyer to be the one to bridge the gap and have the ability to speak your language. Your lawyer should avoid the use of legalese, so that you find the advice easily understandable and relatable. In fact, an essential component of your startup

lawyer's role is not providing legal advice—that is to say, to offer counsel on related, but non-legal, matters. For example, you may ask the lawyer representing your startup in a venture capital financing to advise you regarding how frequently particular deal terms, like participating preferred stock, are seen. Knowing how prevalent deal terms are is not “legal” advice, per se, but explaining which terms are “market” and which are atypical is a key value-add. This relevant expertise will enable your lawyer to help you to prioritize and determine which terms to negotiate and which to accept.

The ability to provide practical business advice is part of a larger skillset that will distinguish your best startup lawyer from the rest. Most lawyers will be able to educate you on how to interpret a provision in a contract or analyze risk in a transaction, but the lawyer that you want to find exercises sound judgment in the provision of real-world advice. Your world is the startup world, and, as such, your lawyer must be able to expertly determine what is important to you (and what is not), given the stage that you are at. This determination is impacted by the particular circumstances and context, such as when and how urgently you may need outside financing, and the circumstances and context need to figure into the advice that you receive.

If, for example, your startup is running low on cash—with payroll, accounts payable, and other obligations due—but has received a proposal from a prospective licensee of your technology in a specific territory outside of the United States, you may need to accept terms that are less than favorable, and it is the role of the skilled startup lawyer to help you determine what your business can live with. Your lawyer should know not to “over-lawyer,” such as by drafting and negotiating the definitive agreements in a way that adds unnecessary time, complexity, and expense to the deal or, even worse, in a way that puts the deal at risk: By continuing to negotiate a matter for which there could be a compromise or by delaying the closing date through prolonged negotiations, the deal could fall through.

5. Understanding the Business

As an entrepreneur, your business is born of an idea that you believe is unique. It could be an advanced technology, an innovative service, or a progressive social mission. Whatever it is that sets your business apart needs to be substantively understood, in both design and practice, by your lawyer.

If, for example, your startup is a software-as-a-service play, your lawyer must be familiar with the software, its functionality, feasible customizations, and what steps the business is willing to take in terms of customer care, warranty, and support. Otherwise, your lawyer will not be able to negotiate successfully with tech-savvy customers, discuss the finer points of service level agreements, and explain what credits, if any, will be offered in the event of unexpected downtime. If this dexterity is not the case with your lawyer, in order to support your sales team, then you may as well be selling off-the-shelf software, because, before the contract is even signed, the prospective customer may determine that the service piece is missing.

Equally as important for your startup lawyer to grasp is the financial model and underlying accounting principles on which your business runs. Whether you are selling a product or a service, there will be a process by which revenue flows through your business. With working knowledge of this process, your lawyer can draft and negotiate license and services

agreements that, to the extent possible, support the conversion of bookings into recognized revenue sooner rather than later. Be sure that the lawyer you select does not plan to simply “do deals” for your startup but that he or she plans to help you craft deals that are structured in such a way as to support your business goals.

While finding “a” startup lawyer may seem a straightforward enough task, finding “your” startup lawyer—the practitioner whose partnership, communication, and practicality will advance your business purpose—requires that you know who and what you are looking for. The right fit from the outset often proves determinative and, therefore, you will want to evaluate carefully skills that many entrepreneurs, especially those searching for a lawyer for the first time, might not intuitively focus on.

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