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STARTING-UP SMART: HOW TO GET THE MOST OUT OF YOUR LAWYER, FOR LESS

If you're focused on testing your idea, developing your product and scraping together enough funds to talk to foundation customers, engaging a lawyer could be the last thing on your mind. But legal issues will arise, and making the right decision about whether, when and how to seek legal assistance might be one of the most important investment decisions that you make.

This cheat-sheet can help you to decide whether and when to seek legal assistance, the type of assistance that will be most appropriate for you, and how to best engage with your advisers so as to minimise the legal barriers now and in the future, while also minimising your outlay of time and money.

Remember, also, that your lawyer can provide you with more than just legal advice – with a wide network of clients, colleagues and policy makers, they can help connect you with potential customers and investors, and will also have an ear to the ground to help signpost any issues that may be on the horizon. You might end up being pleasantly surprised by the added extras.

WHEN SHOULD I ENGAGE A LAWYER AND HOW CAN THEY HELP?

1 ADVICE AND DOCUMENTATION

Now, more than ever, everyone wants the best product for the lowest price (or for free). If, for example, you need to draft customer or website terms and conditions, it might seem easiest to cobble together all the documents you can find on the internet. But reading, considering and then consolidating terms from multiple documents is time consuming, and the finished product won't necessarily comply with the law of your jurisdiction or reflect your company's specific needs.

Luckily, there are good sets of template documents available for free online that you can customise to your startup's needs without having to sweat the small stuff. One example is the [A-Suite](#), a free suite of essential documents specifically drafted for startups, which you can easily customise using the user-friendly guidance notes.

2 ESTABLISHING YOUR COMPANY

When launching your startup, you'll need to think about how to structure your business to protect your current operations and support future growth. Your lawyer will help you to determine the most effective company structure, to register your company, and to explain your legal obligations, including obligations as an officeholder or in relation to the use of an ACN or ABN.

3 DETERMINING OWNERSHIP AND MANAGEMENT RIGHTS BETWEEN FOUNDERS AND SHAREHOLDERS

Startups should be looking to create an optimal legal framework from the outset to ensure that the company operates effectively and is both scalable and conducive to investment. Your lawyer can assist by drafting key documents to provide founders, shareholders and your company with transparency as to ownership and management.

4 DEVELOPING AND PROTECTING YOUR INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

To protect this key asset of your business, it's important to lock in your IP protection early. A lawyer will assess your IP arrangements, designs, copyright, or potential invention or patent registrations, to ensure that you can continue developing your product with peace of mind and that all IP created (especially where it's created for you by contractors) belongs or is adequately licensed to the company. If you're applying, or need to apply, for a patent, it is often helpful to get legal advice on how to test the market, speak to potential customers and seek investment without jeopardising the status of your patent application.

5 HIRING EMPLOYEES OR ENGAGING CONTRACTORS

Getting the right employees and contractors is crucial to the success of your startup. In its infancy, your startup may not have the budget to employ permanent staff, and you may be relying on contractors and/or [interns](#) to help get off the ground – you might even try using incentive schemes or employee stock ownership plans. Ensuring that you have appropriate arrangements with these parties will afford you maximum protection and flexibility to grow, and, most importantly, ensure that everyone is on the same page as to what they're entitled to when you make your millions or hit the inevitable speed humps.

6 CONTRACTING WITH SUPPLIERS AND CUSTOMERS

When contracting with big-time, established customers or suppliers, it is not unusual to feel the pressure to submit to their standard contracting terms and conditions. Sometimes this works but, more often than not, it is helpful to have your own contracts drafted to ensure that the terms more accurately reflect the service being provided and do not unfairly favour one party. Your lawyer can help you to negotiate these terms to get the best outcome, demystify legal terms, and help close the bargaining gap between you and the other parties.

7 LAUNCHING A WEBSITE OR OTHER MEDIA PRESENCE

Given the significance of an online presence – whether through Facebook or LinkedIn, or by capitalising on your tweeting skills – to publicise your company or products, it is important that you establish quality website terms and conditions and consider any privacy issues from the beginning, particularly if your startup is consumer facing, data intensive or collects personal information. It is much easier to incorporate good practices into the fabric of your business from the outset, rather than trying to reverse engineer it once you are required to comply by law or by your investors.

Your lawyer can help you to maximise the benefits of social media, while avoiding the potential legal minefield that is user-generated content.

8 RAISING CAPITAL

When it is time to raise capital, it is critical to get the basics right from the start, and that begins with your term sheet. Your lawyer can help you negotiate, and then document, a [term sheet](#) that protects you in relation to the two most important concerns when raising capital – the economics and control of your startup.

9 NAVIGATING REGULATION

Your lawyer can advise you on the various regulatory regimes that may, or do, govern your company or the industry in which you operate. This is likely to be particularly important if you are dealing with consumers or payments, are operating in the fintech or medical industries, or are seeking to disrupt incumbents. If you are unsure whether your startup will be subject to any regulation, it is important to discuss this with a lawyer in the early stages of development, as this may shape the way your startup is structured or developed, and the way your MVP (or your products more generally) is designed and delivered.

Remember that your lawyer's role is only as limited as you instruct it to be. Lawyers often have relationships with people within regulatory agencies, and should be across the latest, or upcoming, policy developments.

10 RESPONDING TO INCUMBENTS

Often startups are looking to be disruptive or to improve existing processes – so it is not uncommon for feathers to be ruffled. Your lawyer can help you to establish defensive strategies for dealing with incumbents, methods for recognising and collaborating with competitors without breaching anti-competition laws, and processes for responding to anti-competitive behaviour.

HOW DO I MANAGE MY LEGAL COSTS?

1 LET YOUR LAWYER IN ON YOUR BACKGROUND AND GOALS

The easiest way to manage legal costs is to ensure that you and your lawyer are on the same page. It's critical that your lawyer truly understands your business, your concerns and your plans for the future – these have all shaped the way that you have established your business and will assist them in guiding you to reach your goals. Your lawyer will recognise that your priorities may change as your startup develops and pivots, and it is helpful to give them a breakdown of your product or service offering, your startup's corporate structure, history and its anticipated next steps.

The more information you can give your lawyer at the beginning, the easier it will be to keep your costs down. This will also help you and your lawyer come up with a prioritised list of your short-term and long-term legal requirements, so that your lawyer can give you what you need when you need it, in the most cost-efficient manner.

Don't worry if you don't know where to start. Remember – you're the expert in your field, so any relevant information about how you are operating, or where you see your startup heading, will guide your lawyer and flag any potential issues that you might not have considered.

2 DETERMINE YOUR FEE ARRANGEMENTS UP FRONT

The fear of ballooning legal fees often encourages startups to avoid engaging lawyers until it is too late. The key is to ensure there are no surprises. To make sure that you are not left in the dark about fees, ask for quotes at the earliest available opportunity after you've developed your list of legal priorities. Remember that there is no one correct way to structure legal fees – they can be based on a fixed or time-based fee structure. Remember, if your startup is cash-poor, fixed fees or deferred fees (for example, until after you have raised a certain amount of capital) are likely to be your most appropriate options.

3 TIMEFRAMES

Launching your startup can be both exciting and daunting, so it is only natural to want to have all issues and documents sorted out as soon as possible. That said, remember that not all things are urgent – when considering your prioritised list of legal work, think about which pieces have hard deadlines and which are more flexible. Have a conversation with your lawyer about what needs to be delivered by particular dates early on, so that you don't let deadlines pass.

4 BUILD A RELATIONSHIP AND GET TO KNOW THE TEAM

It's important to get to know who you're working with. If you are comfortable with each other, you'll both be more likely to pick up the phone and ask little questions when they arise, rather than waiting for next drafts or scheduled meetings to confirm instructions or intentions – this communication helps save time and money. A lawyer who knows you and your product well will also be more likely to keep you in mind when opportunities arise.

Don't forget to get to know the junior lawyers working on your matters. Although partners will generally be overseeing the process and signing off on all important advice and correspondence, an engaged junior lawyer should be doing a lot of the heavy lifting and will be able to keep your costs down.

5 WHAT CAN I DO MYSELF VS WHAT SHOULD I ASK A LAWYER TO DO?

When seeking to minimise legal costs, ask yourself whether you are able to begin a task without legal assistance. Legal expenses can be greatly reduced if you are able to start populating template documents yourself. That said, some areas of the law will require specialist assistance from the start (eg when dealing with products that you intend to register for patent protection) and it is worth confirming with your lawyer the most effective course.

Your lawyer may need your input at times as well – if, for example, a document is sent back to you with square brackets to insert further information, that's your opportunity to tailor the document. If you're not sure what you can do to help, it is always worth asking. For some things, the more input you have, the more likely you are to see faster and cheaper results.

AND THE REST?

Whether you are being sued or are looking for help to move your company forward, your lawyer can guide you around the tough or unexpected curve balls, to strengthen and better prepare your company to face the future. On that note, make sure you pick a lawyer who knows startups and who you want to be part of your inner circle – you may need your lawyer to have particular skills, experience or characteristics, but the most important consideration is whether you will enjoy working with them. Don't forget, this should be the beginning of a very long and successful working relationship.

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SEVEN TIPS TO ENGAGE WITH YOUR LAWYER

- 1 ENGAGE EARLY**

While engaging a lawyer may seem like an expensive luxury, remember – it's much cheaper and easier to develop the perfect corporate structure right away than be sued later on, and to incorporate good corporate practices early rather than trying to reverse engineer them once you are required by law or by your investors.
- 2 GIVE YOUR LAWYER THE INFORMATION THEY NEED**

The more information you give your lawyer from the outset about how you run your business, your concerns, your future goals and your product or service offering, the easier it will be for them to keep costs low, and to draft documents and give advice that best represents your specific circumstances.
- 3 OUTLINE YOUR PRIORITIES**

Provide your lawyer with a prioritised list of your legal requirements. (Don't worry, they can help you if you don't know where to begin!) This will help your lawyer tailor their services to give you what you need when you need it.
- 4 DETERMINE YOUR FEE ARRANGEMENTS EARLY**

We know it's awkward – but to ensure that you are not left in the dark about fees payable, ask for quotes on your list of legal requirements early. Your lawyer may be flexible as to how they will charge legal fees, so it is always worth asking whether a fixed fee or time-based fee structure, with payment upfront or on a deferred basis, would work.
- 5 GIVE YOUR LAWYER TRANSPARENT AND ACCURATE TIMEFRAMES**

Ensure everyone is working towards the same goals by having conversations with your lawyer early on about what needs to be delivered by particular dates.
- 6 GET TO KNOW YOUR TEAM**

Having a good working relationship with your legal team is a great way to ensure you are always on the same page. A lawyer who knows you and your product will be more likely to keep you in mind when opportunities or issues arise that may affect your business.
- 7 WHAT YOU CAN DO YOURSELF**

Remember, you are the expert in your business. There are plenty of resources available online that, with care, can be customised to work for you. Sometimes, it might be cheaper and quicker to have a first go at customising these documents yourself, and then have a lawyer confirm you are on the right track.