



Five Things Every Startup Needs to Know

By Paul Mersino

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Every startup company is different, but every startup will encounter many of the same obstacles and challenges. I have worked with several kinds of startups—from alternative energy companies to online Web companies to creative and artistic companies—and each of them has unique challenges as well as shared experiences. Drawing on my work with these startups, the following list of things every startup company needs to know has emerged. My knowledge was further enhanced by growing up in a family that had the entrepreneurial spirit and was continually involved in multiple new businesses. Follow the advice of those who have gone ahead of you and it can save you time, money, and hardship when getting your own business off the ground. Early on a startup needs to address critical aspects of the business including structure, documentation, intellectual property, terms, and focus.



1. Choose the right structure

There are many options for any company when it comes to the structure of the entity. C-Corps, S-Corps, LLCs, Partnerships, and Sole Proprietorships all have benefits and drawbacks depending on what type of company you have, whether you are seeking outside investment, and whether you plan on being the sole shareholder or to bring on partners. Regardless of what structure you choose, the most important step is setting up some structure that shields you from personal liability. Other considerations should be taken into account, such as tax ramifications and liquidity of ownership. If you are planning to raise capital, it is important to have legal support when determining what structure is best for you. Simply knowing what the various options are and what questions to ask your attorney or accountant is a good first step.

2. Put it in writing

The most important document you can have is a solid partnership agreement or operating agreement. The agreement should clearly set forth each owner's or partner's rights and obligations, clearly articulate vesting provisions and rights, and set clear rules for what happens if a founder or other owner leaves the company. The stories of friends and family members with a handshake agreement as to how they will run their company and share their successes ending in disputes, arguments, and lawsuits are legion. This is also the most important because it is the most likely scenario to come into play early in the life of a startup: founders move away, shareholders get cold feet, or partners realize that they simply cannot work together. When these events occur, it is much easier to handle if you have had an attorney draft a clear, straightforward operating agreement or partnership agreement at the outset.

3. Protect your intellectual property

How much intellectual property a startup has will depend on the type of company. A company using existing tools and processes to provide a good or service directly to consumers may not have as much need for patent and copyright protection as a high-tech company using proprietary processes and technology. But regardless of the company, you have a brand, name, and reputation to protect. Trademarks, copyrights, and patents are important tools in any company's toolbox. Inventing the next iPhone is much less valuable if you allow

someone to steal your idea. Just as importantly, building your brand through the use of your name, logo, and website will not be as successful if you allow others to dilute your brand, steal your logo, or confuse customers as to who you are. Many IP attorneys are willing to help you properly protect yourself on fixed-fee and even reduced-rate arrangements. Too many companies cut corners when it comes to their intellectual property and pay for it in the long run.

4. You set the terms

Whether you are selling a product, providing a service, or acting as a middleman, set the terms and conditions by which you expect to work. The obvious terms of every transaction are price, product, and payment terms. But a good startup will go further. What laws do you want to govern disputes: the law of the state where the product was sold or the where the product was bought? Have you properly limited your liability, and is the limitation of liabilities enforceable? Do you want to include an alternative dispute resolutions clause? These are only a few questions out of many that should be included in any contract, purchase order, or sales agreement between you and a customer. The perfect transaction is the seamless one that results in zero disputes. Strong terms and conditions, however, will protect you for those imperfect deals.

5. Don't forget the business side of your business!

This sounds obvious, but it is one thing that many startups forget. When you start a new company with few resources, you become not only the CEO, but also the chief marketing officer, accountant, forecaster, customer relations manager, salesman, and sometimes even janitor. With all of this, it can be easy to forget what it was that originally got you into the business: the fact that you are good at providing, producing, or creating a product or service that people want to buy. Don't forget what it is that people are looking to pay you to do.

Another mistake that many new businesses find themselves making is spending so much time looking for investors that they forget to look for customers. There is no denying that you sometimes need money to make money, and that you may need investments before you can fully implement your business plan and model. But while you're wooing investors, don't forget to sell to your demographic. A good business will bring about investors more assuredly than an investment will guarantee a good business.

Following the advice above will not guarantee that your startup will become a Fortune 500 company. But if you begin with the proper structure, put your agreements in writing, protect your intellectual property, set and enforce your terms and conditions, and stay on course, you will have a much easier time focusing on your business. Enlist the help of your attorneys, accountants, and other professionals at the outset rather than waiting until a problem occurs and you will find that it is even easier.

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