

Hiring the Right Lawyer When Raising Capital

It's expensive but will pay off in pitfalls avoided. Find an attorney you trust and who will pay close attention to your case

By Tom Taulli
Friday, August 29, 2008

When I raised the capital for my first company, I didn't use a lawyer. My main reason was the cost. Why spend \$400 an hour? How could somebody be worth that much? And how could a small company pay for it? Well, it was a huge mistake. In the end, because of my sloppiness, I had to spend thousands more in legal fees than I would have had I hired an attorney at the start. In fact, my company almost fell apart. Bottom line, I strongly recommend you hire a lawyer to help you with the fund-raising process (BusinessWeek.com, 7/14/08). In this column, I explain how to find one and what to look for in the hiring process.

Relationships and Internet resources. As much as possible, talk to entrepreneurs to get some advice and contact names. You might even talk to venture capitalists. After all, they know the top law firms.

And be sure to leverage online networking services, such as LinkedIn and TheFunded.com. Another great resource is Avvo. By typing in your city and "venture capital," you'll get a list of relevant attorneys. The profiles include number of years in the profession, disciplinary record, awards, speaking engagements, publications, and memberships. There is even a chart that has an estimate of the time the lawyer currently spends in a specific legal area.

I would focus on lawyers that have the following:

- An "Avvo rating" of 8 or better.
- At least 10 years experience.
- No disciplinary actions.

Of course, it's also a good idea to do a Google search on the attorney. Any negative articles or blog posts? Also see if the lawyer has been quoted in publications or has a blog. Some startup attorneys have incredibly valuable blogs, such as Yokum Taku's Startup Company Lawyer and Ryan Roberts' The Startup Lawyer.

Interviews. Once you have a short list of three or four lawyers, it's time to set up interviews. Be careful. You should focus on the senior associate who will be on your account, not the partner. That's because a senior partner is likely not to be highly involved in the engagement. And, this is a good thing. A senior partner should focus on high-level issues—not with tiny draft changes. Besides, a senior partner may charge \$600 to \$700 per hour.

It's also important to do some homework on the basics of term sheets (BusinessWeek.com, 8/22/08) to prepare for the interviews. Consider asking the following questions:

- How important are liquidation preferences and anti-dilution clauses? Such clauses are a big deal. Ask the attorney about different strategies to deal with them.
- What terms are not important to negotiate? Why? Clauses such as "registration rights" are not worth wasting time on. But does the attorney know?
- Do you represent companies as well as venture capital firms? I want a lawyer who understands both sides. This should allow for a smoother process. Besides, the VCs should be reassured.
- What are some of the companies that you have represented that are similar to mine? What worked? What were the challenges?

Hopefully, these questions will give an indication of whether the lawyer is capable of and creative in dealing with major issues. Feel free to spend an hour or more on the interview. If you feel rushed, then this is a red flag. Moreover, is the attorney providing valuable feedback—or holding back on things? In other words, try to get a sense of the lawyer's personality and style. Is this a person you can trust? A person who will help you deal with stressful situations?

Fees. For a Series A round, the fee is likely to range from \$25,000 to \$50,000. Yes, it's a big amount, and as a result, it's tempting to pay in noncash forms, such as bartering for services or providing options or shares in the venture. However, this can get complicated. What's more, by paying cash, it shows that you are serious. At the same time, you deserve high-quality service and prompt responses to your questions and concerns.

Consider the example of David Kidder, CEO of Clickable (he recently raised a \$14.5 million Series B round). While building his company, he puts in long hours. He also expects his lawyers to do the same. To this end, he has their home phone numbers. Granted, he rarely makes a late-night call. But he likes knowing he can get a quick response when it's needed.

Finally, it's best to hire a lawyer as early in the fund-raising process as possible. Essentially, you want to make sure your company's legal arrangements are solid—such as with contracts, option plans, intellectual-property protection, founder arrangements, and so on. This makes the due diligence process (BusinessWeek.com, 11/5/07) smoother, which should go a long way in helping your company land a good deal.