Case Studies in Extremely Successful Startups

Business & Legal Structures to be Successful

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Preparing to be Successful: Executing the Business Plan

1. Market and customers
   - Sales Pipeline Documents
   - Customer references: validate essential need, willingness to pay
   - Growth and size of market
   - Sales cycle: revenue velocity
   - Distribution channel, channel partners

2. Product and Service offering
   - Business plan, marketing literature
   - Customers – functionality; Technical Assessment & Demo

3. Management team
   - Leadership, coachability, commitment, rolodex
   - Weaknesses or gaps in the team
   - Are they financeable by VCs?
Preparing to be Successful: Executing the Business Plan

4. Competition
   - Customer & Alliance references and industry experts
   - Assess threats of players to company; positioning; strength focus, lead-time, financing, management team
   - Valuation - What are other deals priced at?

5. Financials
   - Follow-on capital needs & likely sources; Milestones & valuations
   - Robustness of business model; sensitivity to driving assumptions
   - Capital structure; Previous investors
   - Realistic path to exit (time and valuation)

6. Valuation
   - Determining the value of an asset or company
   - Size of the round? Tranches
   - Who gets diluted? Stock option pool
   - How does this fit into the overall plan of the company?
Preparing to be Successful: Entity & Capital

1. Form of Entity
   - Choice of legal structure: Corporation or LLC
   - Domicile: Delaware or Local

2. Corporate Records
   - Minute Book, Stock Ledger
   - Corporate Filing, Good Standing, Qualifications

3. Corporate Governance
   - Board of Directors: Size, Selection
   - Board of Directors: Independence and Quality
   - Board of Advisors
   - Conflicts, Avoidance, and Disclosure of Directors’ Interests
Preparing to be Successful: Entity & Capital

4. Equity Structure
   - Founders’ Equity
   - Equity and Options for Employees, Contractors
   - Equity Pricing
   - Earlier Investor Equity – Preferred, Warrants, Debt
   - Shareholder Agreements
   - Securities Law compliance
   - Equity held by non-participants
   - Claims for Equity – documented / undocumented

5. Debt Structure
   - Founder Loans
   - Friends, Family and other Loans
   - Bank Loans
   - Collateral / Security Agreements
   - Factoring / Royalty Agreement
Preparing to be Successful: 
IP and Other Assets

1. Intellectual Property (IP) Rights & Protection
   - Protected Technology – Patents/Inventions
   - Protected Information – Trade Secrets – Copyrights
   - Protected Goodwill – Trademarks, Service Marks
   - Assignment of Ownership
   - Licensing Agreements
   - IP Prosecution; Vigilance against Infringement

2. Company IP and Owner IP
   - Applications relevant to company business
   - Applications and platforms not related – Founder retention
   - Founders’ Assignment of inventions – clear demarcation
   - Investors like Focus on company
   - Founders’ Retention of post-exit IP rights
Preparing to be Successful: IP and Other Assets

3. Claims or potential claims against IP
   - Independent contractors – work for hire
   - Software development and distribution
   - Client & alliance contracts – IP clauses

4. Other Assets
   - Real Estate
   - Franchises
   - Equipment, fixtures and inventory

5. Other Liabilities
   - Claims against the assets or business
   - Litigation pending or threatened
   - State or Federal regulatory issues
Preparing to be Successful: Employees & Contracts

1. Recruitment, Retention, Incentives
   - Stock Options – ISOs and NQSOs
   - Restricted Stock
   - RSUs
   - Phantom Stock
   - Pricing and Exercise Features
   - Employee stake in enterprise
   - Performance & loyalty incentives
   - Incentives for success events
   - Employee attrition

2. Employee/Labor Due Diligence
   - Agreements for Executives
   - NDAs, Confidentiality, Assignment of Inventions
   - Offer Letters and Hiring
   - Outsourcing/Staffing
Preparing to be Successful: Employees & Contracts

3. Employment Claims against company
   - History and pattern of claims, if any
   - Pending claims with MCLE or courts

4. Commercial Contract Rights
   - Customer, Supplier Agreements
   - Warranties and warranty liability
   - Advertising or other service agreements
   - Office and Equipment Leases

5. Strategic Contracts
   - Strategic Alliances and Partnerships
   - Strategic investment or revenue source
   - Rights of first refusal in sale of company
About The Speaker And Presentation

- Robert Adelson has been an attorney for over 30 years
- Began Career with major NYC law firms
- Partner in 6-Attorney Boston law firm since 2004
- Specialized in business, tax, stock and options, employment, contracts, financings, intellectual property, M&A.
- Clients are (1) small companies and entrepreneurs, (2) C-level executives and key employees, (3) independent consultants
- Degrees from Boston University, B.A., summa cum laude, Northwestern University (Chicago), J.D., Law Review, and New York University, LL.M. in Taxation.
Robert Adelson has been Chairman of ENET since 2009

Board member since 2002, director of annual sunset cruise since 2003, 2016 Recipient of IEEE-USA Professional Achievement Award, spoken or moderated more than 20 ENET meetings over last ten years, including meetings on these subjects:

- “Transforming Your Idea into a Successful company”
- “Bootstrapping 101: Alternative Ways to fund a Startup without an Angel or VC”
- “Licensing Technology”
- “Building a Superior Management Team”
- “Raising Seed and Angel financing”
- "Legal Challenges to the Startup”

Co-Founder/Board member 128 Innovation Capital Group, 2004-2015, moderated over 40 meetings with angel or VC investor speakers at each meeting.

THANK YOU!

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