

Case Studies in Extremely Successful Startups

Business & Legal Structures to be Successful

By: Robert A. Adelson, Esq.

Partner, Engel & Schultz, LLP
One Federal Street,
Boston, Massachusetts

www.executiveemploymentattorney.com

The Entrepreneurs' Network (ENET)
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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

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- ▶ 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
- ▶ Author of articles published in *Boston Business Journal*, *Mass High Tech*, *CEO Refresher*, *CEOWorld*, *Family Business Magazine* and other publications.
- ▶ Degrees from Boston University, B.A., *summa cum laude*, Northwestern University (Chicago), J.D., *Law Review*, and New York University, LL.M. in Taxation.



About The Speaker And Presentation

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- ▶ 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.
- ▶ Named one of the “Top 20 Boston Startup Lawyers” - <http://www.chubbybrain.com/blog/boston-startup-lawyers-top-20-massachusetts/>

THANK YOU!

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Robert A. Adelson, Esq.

Engel & Schultz, LLP

One Federal Street, Suite 2120

Boston, MA 02110

(617) 951-9980 ext 205

radelson@engelschultz.com

www.executiveemploymentattorney.com

Blog: <http://robadelson.wordpress.com/>

 [@attorneyadelson.com](https://twitter.com/attorneyadelson)

