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LEGAL ISSUES FOR FORMING A GLOBAL STARTUP

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Presenters



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AGENDA

- The Incorporation Process
- Issues with Former Employers/Institutions
- IP Pitfalls That Can Doom a Startup
- Founders and Employees
- Financing Alternatives
- M&A Exit

The Incorporation Process

- Timing
- Choosing the right structure/entity/jurisdiction
- Delaware/Cayman considerations
- Charter, Bylaws and organizational documents
- Directors, officers, shareholders
- Issuing equity and options
- Corporate record keeping

Issues with Former Employers/Institutions

- Be careful to not use any employer time or take corporate resources or property
- Review any agreements you have signed for details of obligations you may have
- Consider immigration and sponsorship issues
- Upon departure, make sure you have returned any and all company property or equipment (lap tops, home computer files)
- Review University Policies and Procedures

IP Pitfalls That Can Doom a Startup

- Not protecting the confidentiality of your IP
 - Trade shows, publications, website, pitches, discussions not under NDA
 - Lose TS, lose/diminish P rights
 - Consider issues case by case
- Failure to establish clear IP ownership
 - Paying ≠ ownership
 - IP created pre-incorporation
 - Founders/new employees still working for current employer
 - Joint development
- Failure to identify TP rights
 - OSS
 - FTO
 - TM clearance

IP Pitfalls That Can Doom a Startup

- Poorly drafted IP agreements
 - No agreement at all
 - Restrictive covenants in unexpected sections
 - Residuals, non-competes, exclusive P
 - Inaccurate or misleading privacy policy
- Failure to create a fully thought out IP strategy
 - Cover downstream products
 - P vs. TS
 - Pass-through of risk
 - Inventions committee
- Dealing with standards and competitors
 - SSO disclosure obligations
 - RF/RAND

Founders and Employees

- Address equity allocations early in the process, be mindful of cross-cultural issues
- Consider reasonable vesting schedules
- Set clear expectations for the team
- Ensure everyone contributes and has the right incentives
- Do not delay employment paper work
- Consider local labor law requirements and consulting arrangements

Financing Alternatives

- Self funding – most common
- Consider currency issues
- Friends and Family
- Angel Investors
- Venture Investors

M&A Exit

- Transaction Structure
 - Merger
 - Stock Sale
 - Asset Sale
- Key Components of Definitive Agreement
 - Reps and Warranties
 - Conditions to Closing
 - Indemnification

M&A Exit

- Don't Wait
 - Complete and accurate corporate records
 - Shareholder records
 - Assess your governing documents
 - Capitalization records and option issuances
 - Founders and key employee vesting and acceleration provisions
- Process Kick Off
 - NDA
 - Presentation Decks
 - Engagement of Advisors

THANK YOU

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Biography



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E. John Park focuses his practice on debt and equity offerings, public securities offerings, recapitalizations, and mergers and acquisitions (M&A). He assists clients at every state of the business cycle, from initial company formation, venture capital financings, and M&A, to initial public offerings (IPOs), public company reporting, and general corporate counseling. In addition, John represents acquirers and targets in public-private and private-private business combination transactions.

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Karen A. Abesamis focuses her practice on mergers and acquisitions, strategic and venture capital investments, and technology transactions. She advises on general corporate matters, including securities compliance and corporate governance. Her clients include public and private companies, financial institutions, venture capital funds and corporate investors. Having practiced in the Bay Area for more than a decade, Karen has significant experience working with technology companies and non-technology companies that are finding opportunities to grow through the use of technology.

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With a focus on commercial, intellectual property (IP), and technology transactions, Rahul Kapoor counsels clients on strategic alliances, joint ventures, and corporate partnering transactions in the technology and life sciences industries. He also handles standards body licensing structures, patent licensing, open source software strategy, e-commerce and privacy, supply and distribution agreements, consignment agreements, spinoffs and core technology licenses, and IT outsourcing transactions.

Rahul is the local practice group leader of the Silicon Valley and San Francisco Corporate practice, leader of the India initiative, co-leader of the Technology Industry Initiative, and previously served on the firm's Advisory Board and as the Firmwide hiring partner. In addition to practicing law, Rahul taught an IP strategy class for 10 years at UC Berkeley School of Law.

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Insurance



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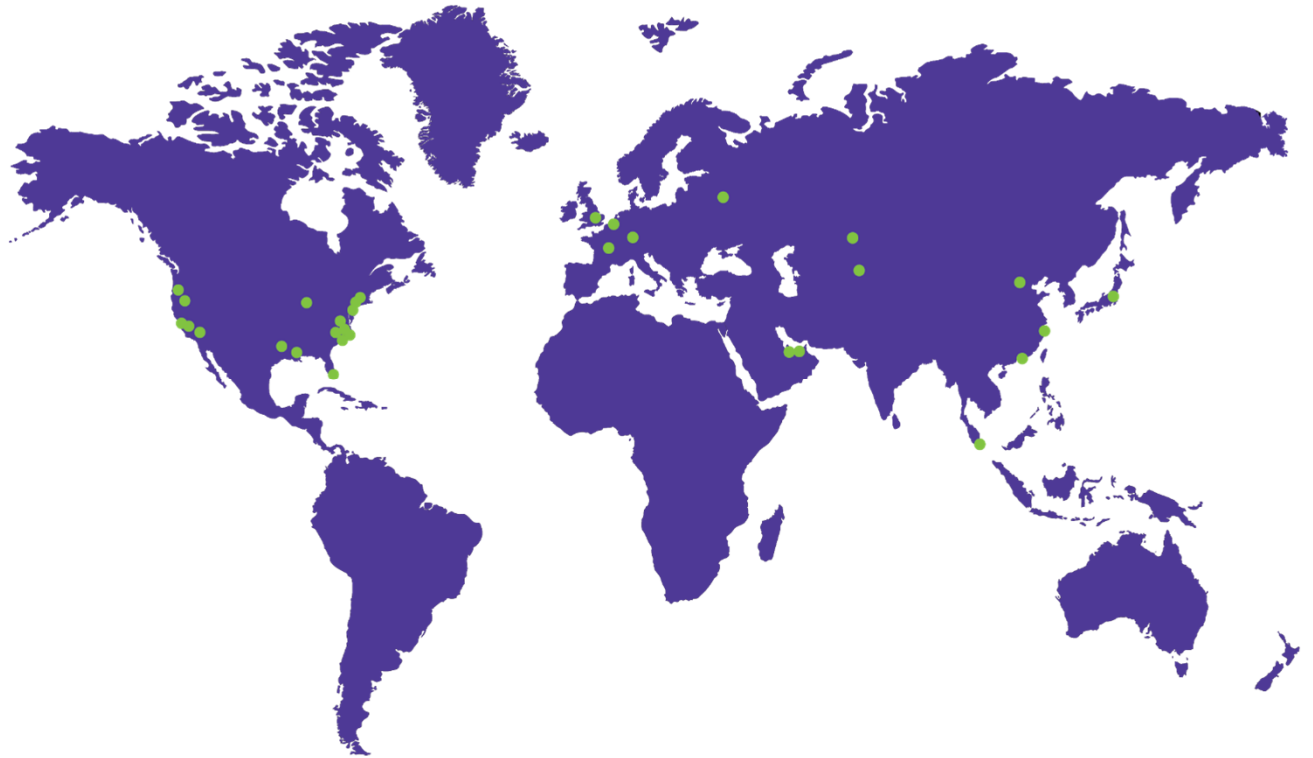
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