“Pitch – How to Make Your Company Attractive for Investment”

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The survivorship bias

- **Theory by Abraham Wald (WWII)**
  - **The Misconception:** You should focus on the successful if you wish to become successful.
  - **The Truth:** When failure becomes invisible, the difference between failure and success may also become invisible.
1. Partners/Company formations

- **Co-founders of the projects**
  - DO NOT SHARE TOO MUCH until Term Sheet/NDA
  - Do your (some) due diligence, track record, their ideas
  - Do not rush to give them equity (%) – they must deserve it

- **Manage mutual expectations**
  - Partner/salary/investor/creditor(loan)?
  - again, put on paper (email)
  - Make sure they have “skin in the game” or be ready to pay them or push them away
1. Partners/Company formations

- **Formation of corporation**
  - Set the architecture of the relationship/logistics
  - There is no “uncertainty” – even if you missed something, the (good) company law has “default provisions”
  - Liability protection (from personal liability)
  - Basis for growth (you have the “control center”)
  - The only way to finance and sell project (or really grow)

- **choice of jurisdiction**
  - “offshore” – focus on making more money for yourself and NOT on paying less taxes
1. Partners/Company formations

- **key provision among shareholders (usually missing without proper company formation)**
  - Misunderstanding re ownership %\% (think in ratio me/you 3:1, rather than you will have 25\%) - dilution
  - Sale of company? Assets? Who decides? Percentage?
  - BMBY ("bamby") – buy-out provisions
  - Drag-along/tag along/RoFR/
  - new shares/new SHs
  - Death/divorce/termination/“запой”/каникулы (adjust %\%)
  - Board/SHA mtg - voting on simple/important voting
  - Non-compete, non-circumvention, confidentiality
1. Company (Building the Team)

- **Failed Teams (other reasons)**
  - too much disparity in approach (one focus)
    - But you do not need the same skill
  - NOT a partner/founder – ask for $$ every day
    - If there is a discussion “how much you will pay me” in first weeks – this is not a partner
  - signing stupid papers at initial stages
  - can lose everything (creeping nationalization – Cyprus, problems with “squeezing-out”);
  - money sending/receiving
EVERYTHING MUST GO to the COMPANY

- All of ideas and IP:
  - Developed BEFORE (assignment)
  - Transfer AT THE TIME of formation (assignment)
  - Becomes property on “click” of the keyboard of each developer in the FUTURE – software development agt

- “Alien code”:
  - GPL, GNU, “copyleft”, LGPL, “hippy code” - LICENSE it!
  - “Well, there is some code that I used for other project” - make sure that your developer licenses it to the company (or vice versa)
Copyrights:

- Copyright registration ©
  - Easy to match/prove ownership
  - MUCH easier to take down/DMCA/наезды
  - Easier to get damages
  - Real threat, in essence – worldwide protection
  - Get back attorney fees

- copyright not registered
  - hard to prove, hard to match, disgruntled employees
  - Still subject to trade secrets and NDA
2. Intellectual Property/Assets

Trademarks

- **registration** – ®
  - Priority - first to use/first to register
  - Take down (наезды)
  - Easier to get damages, treble damages
  - Real threat, can get worldwide (Madrid protocol)
  - Get back attorney fees
2. Intellectual Property/Assets

Trademarks (mistakes and failures)

- Late filing – cyber-squatters, competitors
- Descriptive or generic TM are bad for business and legal rights:
  - “Best Race”, “Good Farm”, Facebook, ($$$ to defend!)
- Must be:
  - Fanciful (Playzum, Fozium, Alawar, Playrix, Luxand, Pintrest)
  - Arbitrary (BlueTooth, Gaijin, Oxygen)
  - Suggestive (Pinxter, Apple, SkyOdds, ToonBox, ZBrainy)
- More read at: IT Grabli: how to choose the name for you product [wp.me/p2AI6A-1n](http://wp.me/p2AI6A-1n) via @femidaUS
3. Investments

…а вы, правда, инвестор?
3. Investments

- **Terms sheet (MoU, LoI) is preferred**
  - always makes the deal cheaper
    - kills bad deals
    - makes negotiations more certain
    - expedites agreements
- **No-shop (no negotiations with others)**
- **Confidentiality**
3. Investments

- **Shareholder Agt, investor may get:**
  - Board seat
  - Liquidation rights (west coast v east coast)
  - Board seat (with veto rights)
  - Shareholder vote (with veto right on major issues)
  - *only* Investor can “drag”-along (danger!)
  - *only* Investor get “tag-along” (bad negotiations)
  - Anti-dilution protection
  - Preemptive rights (buy new shares)
Ты приходишь ко мне с презентацией своего проекта и хочешь инвестиций.

Но твой пitch звучит без уважения, и ты даже не отрываешь глаза от своих слайдов.
3. Investments

- You have to be ready to take the money
- Danger areas:
  - Don’t make investors do YOUR job
  - Don’t give out too much
  - Perform as promised
  - Put things on paper/agreement
  - Protect you IP
4. Consultants/distributors

- **Bad deals/agreements:**
  - No duties, reps and warranties
  - No support, no client feedback to you
  - Deductible “expense” – too much, nothing left for Royalty
    - Watch for definition of Revenue
  - Exclusive (unlimited)
    - Must be time+performance+territory
  - No way out of the agreement
  - Non-compete, non-solicitation, confidentiality
  - Place of dispute, governing law, loser pays atty’s fees
5. Customers/Platforms

- Customers/Users
  - Biggest: true disclosure re use and accounts
  - Clicks/updates of policies accounts
  - Make sure you actually own the customer list
  - Be careful with personally identifiable information - PII (evolving area in law and business)
  - Can you sell/share/license/use/contact users
  - Do you lose it if you sell company?
  - EU directives re privacy – BIG problem for all
  - Data mining – customer/ social networks do not like it
5. Customers/Platforms

- real Privacy Policy/Terms of Use for your business not the one you took from Facebook. Why:
  - It does not reflect your business
  - You don’t have a large budget for legal fees to implement those policies
  - “Facebook” et al. are subject to constant attack
  - “Facebook” et al. have nothing else but private information - you actually might have a product
  - You may actually violate Facebook’s policies when you “integrate” too much – they want your money
Need your feedback!

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