Burns Figa & Will P.C.

THERESA M. MEHRINGER
tmehringer@bfw-law.com

Common Mistakes By (And Practice Tips For) Early Stage Companies

The most common mistakes we see in start up and early stage companies involve not papering purchases of securities, including shares issued to founders, shares and promissory notes issued in the seed capital round, and other securities issued to purchasers and service providers. Additionally, by not using subscription agreements for purchases, the founders/officers/directors may be risking personal liability as well as company liability. Here are a few inexpensive tips for minimizing liability:

- Keep a detailed and accurate capitalization chart, including share issuances and stock issuances.
- Use consent board minutes and simple one page agreements for founders to memorialize in writing what the founder is getting and what the company is issuing. Use share amounts, not percentages. This applies to LLCs as well as corporations.
- Have the founder write a check to the company for his/her shares, even if it is a nominal amount.
- Use subscription agreements for all investors, regardless of how well you know the investor.
- Use a simple subscription agreement with a description of the capital structure, a list of risk factors, and a summary of the business (even if only a few page summary). This can provide basic, much-needed protection from disputes arising with the purchasers.
- Don't give shares or options in lieu of services without knowing the tax effects to the company and the recipient, and use a stock option and stock bonus plan if possible.

Remember: once you issue shares, grant stock options, or make promises of equity ownership to people, you can't "undo it", so do it right in the first place. Following these tips is a very inexpensive way to avoid both company and personal liability in the future. For more information on how to minimize your liability under corporate and securities laws, contact Theresa Mehringer at tmehringer@bfw-law.com.