

Five Situations When Founders Should Consider Engaging Their Own Legal Counsel

Company counsel may have been with you from the start. They've handled difficult negotiations and financings. But remember, they represent the company, not the founders. You should consider engaging your own legal counsel in the following situations:

- 1. Employment Agreements:** Salary, bonuses, equity grants, severance, non-compete covenants, for cause termination. Each of these terms can have a material effect on your role, compensation and control of your company.
- 2. Equity Grants:** Top-up grants, options vs. restricted stock grants, limited recourse loans, vesting provisions, 83(b) elections and 409A compliance. Not all grants are created equal, and your interests may be different than the company's interests.
- 3. Venture Capital Investments and other Financing Transactions:** Your new investors may want a board seat, protective provisions, revesting of founder stock and other rights that affect founder control and equity.
- 4. Stockholder Agreements:** Transfer restrictions, rights of first refusal and co-sale, permitted transfers for estate planning, sales corridors for founder liquidity. Various types of company stockholder agreements may affect the transferability, and ultimately the value, of your equity.
- 5. Exit transactions:** Your company is being sold. The deal agreements may include non-compete covenants, equity rollover provisions, principal stockholder escrow agreements, tail policies for D&O insurance, new employment agreements. These provisions fundamentally affect your personal interests. The nature of the payments you receive must be structured to avoid 280G "golden parachute" adverse tax payments.

In each of these situations, your interests may not be aligned with the company's or the other stockholders' interests. Even though you may be the contact person for company counsel, their duty is to the board of directors and the stockholders as a whole, not to you. Your own legal counsel will look out for your personal interests.

Patterson Belknap has a multi-disciplinary team of lawyers who are focused on the legal needs of founders and entrepreneurs. A description of the full range of our services and attorney contacts can be found [here](#). Please visit the [Founder Focus Resource Center](#) for more content on broad range of topics of interest to founders and their professional advisors.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact a member of the Founder Focus team:

| | | | |
|-----------------------------------|--------------|--|----------------------|
| Michael S. Arlein | 212.336.2588 | msarlein@pbwt.com | Estate Planning |
| Edward H. Smoot | 212.336.2168 | ehsmoot@pbwt.com | Corporate/Employment |
| Douglas L. Tang | 212.336.2844 | dtang@pbwt.com | Corporate/Employment |
| Kathryn Bi | 212.336.2320 | kbi@pbwt.com | Disputes |
| Robin Krause | 212.336.2125 | rkrause@pbwt.com | Philanthropy |
| Justin Zaremby | 212.336.2194 | jszaremby@pbwt.com | Philanthropy |
| Dahlia Doumar | 212.336.2988 | dbdoumar@pbwt.com | Tax |
| Irene Kim | 212.336.2195 | ikim@pbwt.com | Tax |

To subscribe to any of our publications, call us at 212.336.2813, email info@pbwt.com or sign up on our website, <https://www.pbwt.com/subscribe/>.

This publication may constitute attorney advertising in some jurisdictions.
© 2022 Patterson Belknap Webb & Tyler LLP