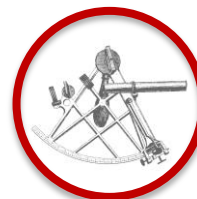
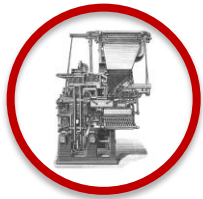


startupPerColator™ Series

Emerging Companies
The Legal Side of Things



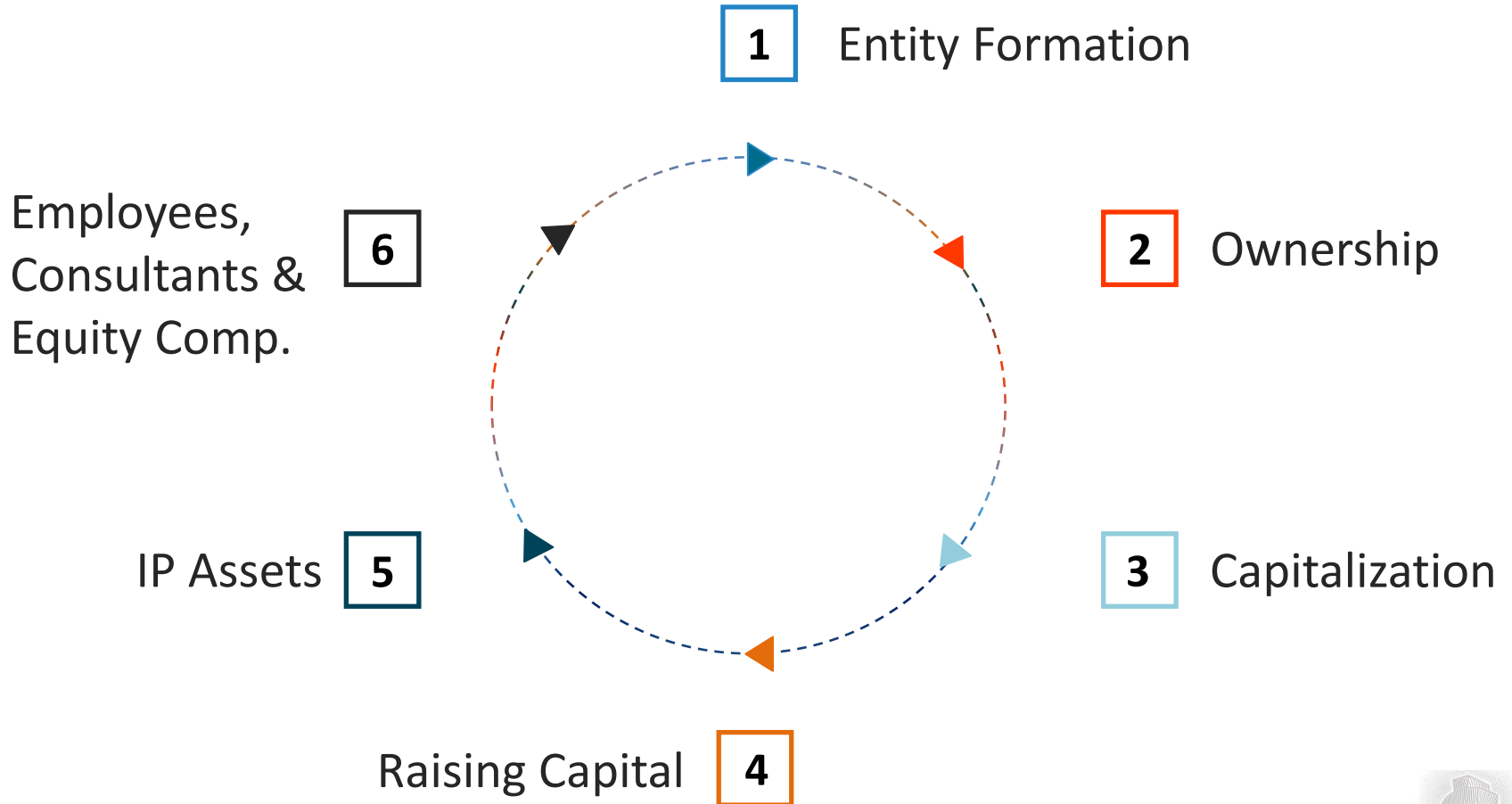
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- **Some Ground Rules**

Ask away.



What We'll Cover



But first...

- **Why even deal with a lawyer to begin with?!?!**

Don't they just:

- Cost money?
- Slow everything down?
- Wear outdated suits?



Well...

**Wanna know a
secret?**



- Consider your lawyer part of your team...

PERKINScoie
COUNSEL TO GREAT COMPANIES



Entity Formation

1



FORM YOUR
ENTITY EARLY

Entity Formation

	C-Corp	S-Corp	LLC
Structure	Stock (multiple classes possible)	Stock (Common Stock Only)	Units / Membership Interests
Tax	Double Tax	Flow Through	Flow Through
Governance	Board/Shareholders	Board/Shareholders	Flexible

Entity Formation

Choose the Right Entity Structure



Business Purpose



Ownership/Control



Liability Protection



Taxation

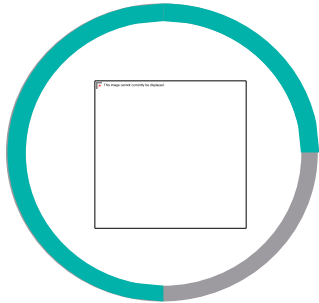


Financing/Investment

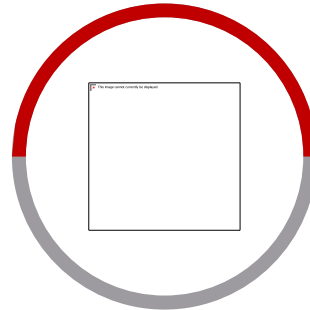


Exit Strategy

Entity Formation



Avail yourself
of liability
protection



Allocate
ownership;
issue equity



Adhere to
corporate
formalities



Prevent "Forgotten Founder"

2



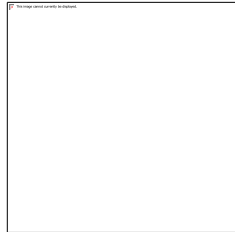
DEFINE OWNER
CONTRIBUTIONS
& EXPECTATIONS

Ownership



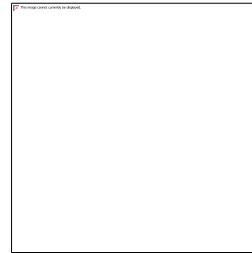
Monetize; Value contributions

- Founder contributions
- Vesting



Understand tax implications

- Money vs. Property vs. Services



Memorialize agreement

- Consider buy/sell provisions



Recordkeeping habits

- Always keep cap table up-to-date

Capitalization

3



CAPITALIZE
YOUR COMPANY
SUFFICIENTLY

Capitalization

Undercapitalized

=

**Potential
Personal Liability**



4



DEVELOP A
SOLID FUNDING
STRATEGY

Raising Capital



How much funds do you have?



How long will your funds last?



How much more funds you need?



What milestones will you reach?

Raising Capital

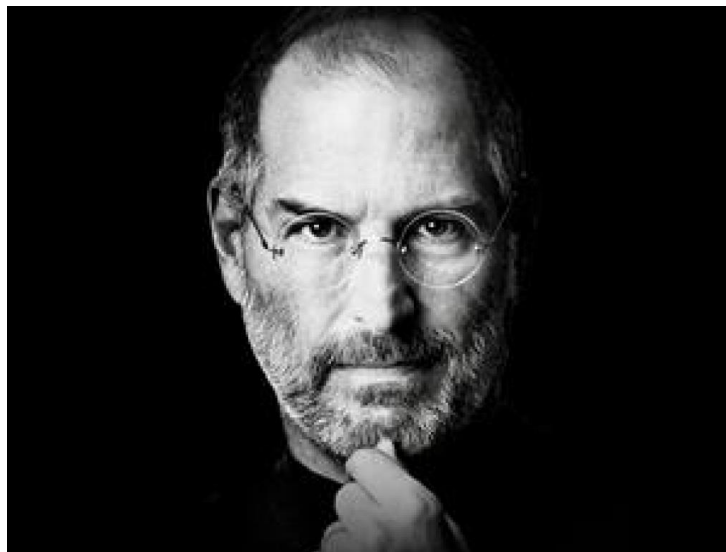
Adhere to Fundraising Best Practices

- 1 If using a "placement agent," know the difference between a finder and a broker.
- 2 Unless you plan to publicly register securities, understand federal *AND* state "blue sky" private placement exemptions that are available.
- 3 Understand your funding needs *BEFORE* you begin talking to potential investors.
- 4 Know your potential investors (accredited vs. unaccredited; sophistication; etc.)

Time-Out

Quick Note on the JOBS Act

**Think
Traditionally**



5



TAKE INVENTORY
OF YOUR IP

IP Assets

The IP you own and the IP you think you own can be two very different things. Review past employee docs, including your own.

- Trademarks
- Copyrights
- Patents
- Trade secrets



IP Assets

Protect Your Intellectual Property Assets

- ✓ Consider company IP protection protocols (Patent disclosures; Managed TM/Copyright portfolio; Trade secret protection plan)
- ✓ Use NDAs with third parties (Do NOT disclose invention without one)
- ✓ Work-for-Hires (Employees vs. Consultants)



6

IMPLICATIONS OF EMPLOYEES, CONSULTANTS & COMPENSATION

Employees, Consultants & Compensation



Offer of
employment
or contract



Confirm
status of
noncompetes



Confirm status
- Employee vs.
Contractor
("IRS control test")



Seek HR
advice before
you hire or
terminate

Employees, Consultants & Compensation

Set Up Equity Compensation Properly



Formalize plan before you offer



Legal compliance - Talk to a lawyer so you don't pay dearly later. Embrace legal!



Unexpected results

- Deferred Compensation Rules – IRS 409A
- IRS 280G Golden Parachute

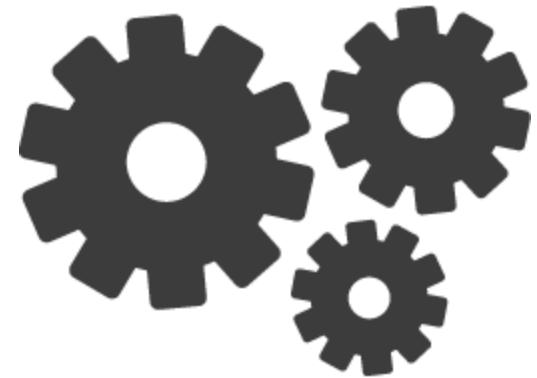
In Summary...

- 1 Form your entity early
- 2 Choose the right entity structure
- 3 Define owner contributions and expectations
- 4 Capitalize your company sufficiently
- 5 Adhere to fund raising best practices
- 6 Take inventory of your IP
- 7 Protect your IP Assets
- 8 Understand the implications of employees and consultants
- 9 Set up equity compensation properly
- 10 Embrace legal best practices, including hiring counsel early on

In Summary...

Biggest Diligence Failures

- Poor Capital Structure
- Dissident Founders / Key Employees
- Shoddy Records
- Employment Liabilities
- IP Issues



Now, out with your inquiries, old chaps.



Thank You!

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to discover...



#whatsPerColating

Partner

Full Bio Available at www.perkinscoie.com/MRubocki/



MELANIE G. RUBOCKI

Melanie Rubocki is the Head of the Corporate group for the Boise Office. With a foundation in finance and entrepreneurial studies from the Wharton School of Business, Melanie brings a business sensibility and reasonableness to her client relations and any negotiated transaction. She represents business clients through their entire life cycle, from startup formation to exit. Her approach to the client relationship is proactive, rather than reactionary - she endeavors to help clients avoid legal pitfalls and traps for the unwary.

Melanie represents clients in many industries including: automotive aftermarket, cleantech, e-commerce, energy, interactive entertainment, manufacturing, mining, retail and consumer products and software and other Web-based businesses. She regularly advises clients in relation to emerging growth company issues, entity and fund formation, and licensing and technology transfer transactions. And, she regularly advises directors and officers on corporate governance and fiduciary duty matters.

Melanie has led clients in all forms and stages of equity and debt financings and has an active M&A practice, advising both buy and sell side clients on complex mergers, acquisitions and other strategic business joint venture and arrangements. She also handles certain commercial real estate transactions and general business contracts and transactions. Melanie has recently founded and currently leads the U.S. Foreign Investment Visa industry group which assists clients considering E-2 or EB-5 investment opportunities including designation as a USCIS regional center.

Melanie is also very active in the community and serves on a number of non-profit boards as described on the website.

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Derek Athey is an associate with the firm's Emerging Companies & Venture Capital practice. His practice includes entity formation, corporate governance, venture financing, patent monetization financing and M&A transactions. Derek is experienced in both buy-side and sell-side M&A transactions, representing private equity funds and private companies nationwide.

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