



“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

1

- 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

1

➤ 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

1

- 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)

1

➤ 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

2. Intellectual Property/Assets



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)

2. Intellectual Property/Assets



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/p2Al6A-1n via [@femidaUS](https://twitter.com/femidaUS)

3. Investments



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)

3. Investment/MONEY

1

2

3

Ты приходишь ко мне с презентацией своего проекта и хочешь инвестиций

Но твой питч 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

Contact information

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