

Legal aspects of venture creation

Across Legal
Barcelona

Personal CV

- From Madrid, Barcelona based
- Associate at **Across Legal**
 - Firm focusing on startups and investment
 - Part of the IT/IP department
- Main advisory
 - IT licensing
 - IP protection and licensing
 - Open source
 - Tech transfer
 - Privacy compliance

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Introduction and objectives

- By the **end of the session**, you should
 - Be **aware** that the legal issues of setting up a business are important
 - Have a **general understanding** of what needs to be done from a legal point of view
 - Have your **own roadmap** of the [... **fill in your number!**...] steps you have to do to get set up
 - Be experts in registering trademarks, setting up companies, negotiating and signing financing agreements, licensing your technology and selling it to clients (...**NOT!**)

First break out activity: *AWARENESS*

- In your **breakout room**
 1. **Identify** what you think are the key legal issues you have faced and are facing today (look at the slides!)
 2. **Make a list** and consider
 - a) The issues you have already solved
 - b) The issues on the drawing board
 3. **Report back in 10 minutes!**

Legal issues - Core topics

10 core legal aspects of venture creation

1. Protect your ideas and IP
2. Build solid personal relationships and teams
3. Formalise the venture
4. Protect your own personal assets
5. Create a brand
6. Make your product legal
7. Get some money!
8. Find and work with partners
9. Sell!
10. Talk to a lawyer

IPR - Copyrights, trade secrets, patents, designs, NDAs, IP assignments from creators

- Identify your **IP assets**
 - Including confidential information
- Define the right **protection regime**
 - Registered IP (patents, marks, designs)
 - Unregistered (copyrights, databases)
- Take **protection steps**
 - Register the registerable IP
 - Sign full IP assignments from creators
 - Include confidentiality obligations
- **Deposit** your works, designs, documents, know-how

Relationships - NDAs, MOUs/LOIs, collaboration agreements, employee agreements

- Ventures are built by **teams**
- Need to **focus obligations and contributions** around the project
 - NDA / confidentiality
 - IPR assignments (see above)
 - Collaboration and contribution commitments
 - Planning and timing
 - Responsibilities and Liabilities of the parties
- **Key relationships**
 - Founders: joint venture/collaboration agreement or company formation (see next)
 - Staff: employee agreements (if the company exists... until then, they are external contributors)
 - External contributors: NDA/service agreement

Company formation, shareholder agreements

- The biggy in structural terms: do you want to set up a company or other entity to structure the venture, and when?
- **Pros and cons**
 - - Set up and running costs
 - + Single point of ownership and management
 - + Limited liability
 - + entity for receiving and managing funding
 - + hiring talent
- **Steps**
 - Identify **where** you want to set up the company / entity
 - Identify the **type** of company (there are different types, different countries)
 - Comply with formation **requirements**, usually company bylaws
 - Multiple shareholders?: usually sign a “shareholder agreement” to govern relationships among partners outside the formal company bylaws

Limited liability formats

- Not everything is committed to the project
 - Reservation of personal or public assets/information
- Ventures mean **risk**, which may mean **liability** for venturers → need to manage and reduce this risk
 - Advantages of limited liability company: liability limited to the share capital
 - Exceptions in the event of fraud or violation of by-laws (depending on jurisdiction)
 - Idem for potential investors

Register your trademark

- Trademarks **identify** your ventures, your company and your product
- For **legal protection**:
 - trademarks usually need to be registered
 - In the territory and for the products where they will be used
- **Rights**:
 - exclusive use in the territory for the product
 - marketing, sales, online content and domains, social networks, brochures, product names
- **Steps**:
 - Design your original name and/or logo
 - Prior check on TMVIEW for existing marks, in the same product category and territory
 - Register via the online or offline processes
 - Pay fees (first 10 years... and then renewable)

Verify regulatory compliance

- Many food related products must have **regulatory approval**
- EU has an overall **harmonised regulatory framework** for approvals
 - But this needs to be looked at national level
 - Internationalisation: also need to review compliance and certification in other territories
- **Key issues**
 - Requirements for approval?
 - Timing? (impact on business plan)
 - Cost
 - Expert support

Financing: Investment agreements, simple or convertible loans

- Different ways of **obtaining finance** for the venture
- Three **main types**
 1. Public grants
 2. Investment (from FFF to formal VC)
 3. Loans (convertible or not)
- **Key issues**
 - For public grants: What are the conditions?
 - For investments: Know the valuation of your business, how much are you willing to give up?
 - For loans: calculate costs against revenue over the term of the loan
- **Legal instruments:** essential to speak to lawyers (many tricky terms!)

Partner and distribution agreements

- Your project will have **external support** – partners are key
- Many **types of partners**
 - Manufacturers
 - Prototyping partners, Proof of concept
 - Accelerators / incubators
 - Eventually: distribution and sales
 - Communities
 - Service providers: marketing, finance, IT
- **Key issues**
 - They are “external” → NDAs, responsibilities and liabilities, licensing or assignment of IP
 - Clear rules of engagement
 - Termination and “get out” clauses (if the partnership doesn’t work) – don’t get caught by

Prototyping - Proof of concept or prototype agreements, license agreements

- Depends on the **TRL**
 - The lower you are, the simpler the agreement, but need to focus on confidentiality, IP
 - The higher up the TRL, focus on product, branding, eventual sales
 - Key issues: minimise liabilities, control the environment, confidentiality and ownership of results
- **Licensing agreement** – key issues
 - Great for leveraging IP to third party manufacturers and other partners
 - Financial terms: royalties, one-off payments, up front
 - Confidentiality and scope IP license
 - Termination / get out clauses!

Lawyers - Advisory services

- **Key partner** in building and maintaining the venture
- Look for the lawyer
 - Who is a team player, not just an external service provider
 - Who is curious and wants to understand the business
- It's a **competitive market**
 - Don't just go for the first contact (or your brother's girlfriend) (or your online course tutor)
 - Don't use your financial investors / accelerator lawyers! (conflict of interest)
- **Key skills**
 - IPR, startups, collaborations, financing, licensing, product regulation and liability

Second break out activity: *PLANNING*

- In your **breakout room**
 1. Take your **list of “next issues”**, and update after our discussion
 2. **Prioritise** and **Plan** – divide into
 - a) Essential issues that would have to be solved in the next 6-months
 - b) Longer term issues that are important for the next stage of the business
 3. Consider **obstacles** and **challenges**: what are you going to face?
 4. **Report back!**



THANKS FOR YOUR ATTENTION!

Beatriz Benítez -Alahija



bbenitez@acrosslegal.com



www.linkedin.com/in/beatrizbalahija