
Representing Startups

by
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Representing Startups

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This book was written for practitioners representing startups or small growing companies. It is a guide to the legal problems likely to be encountered throughout the expanding life of a new company. It is a distillation of the authors' observations on the various phases of growth of a small business culled from their collective experiences as practicing lawyers in the field. The authors have applied their experience to the essential legal issues in each such phase.

Many disciplines in addition to law are needed to provide effective counseling to startup or nascent businesses. Given the limited financial and time resources of the entrepreneur, the small business lawyer often finds the need, at times, to be a psychologist, accountant, investment banker, technologist, tax consultant, venture capitalist, management consultant and executive search firm.

Representing Startups is practical guide to help orient the small business lawyer to likely problems. The chapters are organized chronologically to correspond to the typical lifecycle of a small business, from inception through public offering and beyond, to disposition by merger or sale. Each chapter also includes a list of sample forms and checklists that the authors have used in their own practices.

Updates to this edition of *Representing Startups* include, but are not limited to, the following topics and recent developments:

- For an updated introduction as well as statistics and information regarding the amount of startups and whether they will succeed, see Chapter 1.
- For an enhanced and updated discussion of equity financing and the ways in which some companies raise additional capital, see Chapter 10.
- For improved discussion of the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, see Chapter 14.

To our clients, whose problems and
opportunities provided the
basis for this book.

“The duty of a lawyer today is not that of a solver of legal conundrums; he is indeed a counsellor of law. Knowledge of the law is of course essential to his efficiency, but the law bears to his profession a relation very similar to that which medicine does to that of the physicians. The apothecary can prepare the dose, the more intelligent one even knows the specific for most common diseases. It requires but a mediocre physician to administer the proper drug for the patient who correctly and fully describes his ailment.

“The great physicians are those who in addition to that knowledge of therapeutics which is open to all, know not merely the human body but the human mind and emotions, so as to make themselves the proper diagnosis—to know the truth which their patients fail to disclose and who add to this an influence over the patient which is apt to spring from a real understanding of him.”

Louis D. Brandeis, U.S. Supreme Court justice from 1916 to 1939, in **Business—A Profession** (1914).

About the Authors

ROBERT BROWN practices law in Louisville Kentucky with Lynch, Cox, Gilman & Goodman P.S.C., a leading Midwest law firm. He advises on investments, mergers, acquisitions and divestitures for U.S. companies and foreign companies' operations in the U.S.

For the past 40 years, he has collaborated closely with companies as an investment banker and attorney, serving both in-house and as an outside advisor. Robert is admitted as an attorney in New York, Washington, D.C., California and Kentucky, and is qualified as a solicitor in England and Wales and in Hong Kong. From 1991-1993 he was admitted as a foreign lawyer in Japan. From 2018-19, he was Chair of the American Bar Association International Section, and from 2017-2020 he was Chair of Japan/America Society of Kentucky. He is presently on the executive committee of LAWASIA. Appointed by the US Commerce Secretary, Robert is chair of the Advisory Board of the National District Export Council (NADEC), as well as Chair Emeritus of NADEC. Both organizations work to support US exports. He is also Past Chair of District Export Council of Kentucky and Southern Indiana. Previously, he was Treasurer of Global Ties which oversees the US State Department International Visitors Leadership Program; chair of Venture Connectors; chair of World Trade Center of Kentucky; chair of World Affairs Council of Kentucky and Southern Indiana; and chair of Asia Institute Crane House.

In addition, he is the author of *Mergers, Acquisitions and Divestitures; and Corporate Counsel's Guide to Doing Business in South Korea*. He is the co-author of *Impact Investing, Buying a Business; Corporate Counsel's Guide to Doing Business in Vietnam; Emerging Companies Guide; Financing Start-ups; Going Global; International Business Plans; and Limited Liability Companies Guide*.

He has two Ph.D. degrees. The first is from Cambridge University where he studied Japanese privatization with the second from The London School of Economics and Political Science examining Indonesian legal reforms and creditor relations. He recently received two Post Graduate Diploma Programs at Saïd Business School, Oxford University - in Global Business 2021, and Financial Strategy 2022. In 2016, he completed a Master of Laws from the University of London. He also received a Master of Science degree from Jochi University in Tokyo, and an Advanced Accounting Certificate from Bellarmine University.

During three years of law school, he earned J.D., M.B.A. and Master of Science Degrees from the University of Louisville. Robert has taught law and economics courses at the law schools of the University of San Francisco and University of California Berkeley, as well as business, finance, accounting and economic courses at the business School of Bellarmine University, where he also served as Dean.

Recently, he received the Order of the Rising Sun, Gold Rays with Rosette from the Emperor of Japan in recognition of his work to improve relations between the US and Japan. It is the highest award given to a foreigner by the Japanese Government.

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ALAN S. GUTTERMAN is the developer and author of a widely-recognized portfolio of timely and practical legal and business information for attorneys, other professionals and executives in the form of books, online content, webinars, videos, podcasts, newsletters and programs. He has extensive experience advising small and large business enterprises in the areas of general corporate and securities matters, venture capital, mergers and acquisitions, international law and transactions, strategic business alliances, technology transfers and intellectual property. He has also held senior management positions with several technology-based businesses including service as the chief legal officer of a leading international distributor of IT products headquartered in Silicon Valley and as the chief operating officer of an emerging broadband media company. His current practice interests focus on sustainable entrepreneurship, social enterprises, impact investing, corporate social responsibility and business and human rights. He has served in a number of capacities with various sections of the American Bar Association and has also been a member of the executive committees of the Sections of Business Law and International Law of the State Bar of California. In addition, Mr. Gutterman has published numerous books and articles on a diverse range of legal and business topics, including the popular Thomson Reuters/Westlaw database Business Transactions Solutions available exclusively on Westlaw (by typing “Business Transactions Solutions” or “BTS” into Westlaw’s search field). Business Transactions Solutions is a one-stop resource that serves as a complete transactional and compliance productivity tool for the entire life cycle of a business entity and is an absolute must-have for business attorneys working in small- and medium-sized law firms, and corporate law departments.

In addition to Business Transactions Solutions, Mr. Gutterman is the author of the following Thomson Reuters publications: California Transactions Forms: Business Entities, California Transactions Forms: Business Transactions, Corporate Counsel’s

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Guide to Strategic Alliances, Corporate Counsel's Guide to Technology Management and Transactions; Handbook of Law Firm Management; and Legal Compliance Checkups: Business Clients. Westlaw users may view and use all of his online publications on his Business Counselor page on Westlaw. Mr. Gutterman has been an adjunct faculty member at several colleges and universities, including Berkeley Law, Golden Gate University, Santa Clara University, and the University of San Francisco, teaching classes on a diverse range of topics, including corporate finance, venture capital, corporate law, Japanese business law and law and economic development. He received his A.B., M.B.A., and J.D. from the University of California at Berkeley, a D.B.A. from Golden Gate University, and a Ph. D. from the University of Cambridge.

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