

# Getting to “No”!


A balanced approach to due diligence and deal negotiation

Richard C. Bruder • [rbruder@elp-law.com](mailto:rbruder@elp-law.com) •  
[www.elp-law.com](http://www.elp-law.com)



Nothing feels as bad as a missed deal





# Finding the Balance Due Diligence vs. Term Sheet Negotiation



# Old Dog Learning New Trick



# THE DEAL FUNNEL

1. Generate Opportunities (60)

2. Eliminate obvious misfires (12-14)

3. SCREENING - Basic Review – recommend deals of interest (4-6)

Screening

4. Early Shakeout to determine alignment and eliminate SHOW STOPPERS (3)

Show Stoppers

5. Final List of Prospects for DEEPER DIVE due diligence (2)

Deeper Dive

6. Closing THE deal– FINAL due diligence (1)

Final

# Screening





# Legal Due Diligence - Screening

- How soon must we close (we need money tomorrow)
- I won't give you equity
- I won't sign a non-compete
- The patents are owned by me – outside the company
- Pending or threatened litigation against company or management team
  - Pending or threatened government investigations
- Pre-emptive rights




# Business Due Diligence - Screening

- Funding Needs – unrealistic, no milestones, will we get to cash flow breakeven?
- Team – inexperienced, not coachable
- Wrong Stage – pre-revenue, pre-prototype
- Product / Service – no pain

# Show Stoppers





# Legal Issues – Show Stoppers

- Cap Table – Cats in the Wheelbarrow
- Management Team in Conflict
  - with each other
  - with family
  - with time commitments
- Unfiled returns / Unpaid Taxes / Tax Liens
- Excessive Current Liabilities
- Non-compete Agreements with Former Employer
- Background check

# Business Issues – Show Stoppers

- Preliminary Term Sheet – here's how we operate
  - equity
  - non compete
  - founder vesting
  - control issues
  - exit
- Unrealistic Pre-Money Value
- Market – too small, too vague
- Competition – too powerful
- Product / Service – Does it work? Can it be made to work?
- Inappropriate use of proceeds
- No Exit
- Poor Advisors (?)

# Deeper Dive





# Legal Issues – Deeper Dive

- Term Sheet Detail
- Freedom to Operate Opinion / Preliminary IP Search
- UCC Search
- Third Party Consents Needed (Landlords, Franchisees, Licensees)
- Long Term (over 1 year) / Burdensome Contracts (license agreements, buy sell agreements, sponsored research agreements)
- Non Compete Agreements Between Company and Third Parties



# Business Issues – Deeper Dive

- Founder's Equity
  - Too large / too small
  - Vesting
- Board Composition
  - Active
  - Right skill sets
- Financial Projections
  - Realistic
  - Coherent
  - Reasonable assumptions
- Team
  - Gaps to be filled
- Follow On Funding
  - Needed?
  - When?
- Market
  - New market or existing market?
  - Follow on opportunities, or one trick pony?
- Length of Sales Cycle
- Margins



# Legal Due Diligence - Final

- Detailed Due Diligence List

Nothing Feels As  
Good As A Closed  
Deal





But Wait! There's More. Supplemental  
Materials at [www.elp-law.com](http://www.elp-law.com)

