

Evolving needs for Emerging and High Growth Companies: Seed stage



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If your company is at the Seed stage in raising capital, there are commercial, employment, compliance and other strategic considerations to keep in mind as you move forward.

Partners Michael Grantmyre, Emerging and High Growth Companies Group, Steven Dickie, Employment and Labour Group, and Simon Hodgett, Technology Group, unpack seed-stage priorities, including investor relations, cap table and reporting hygiene, customer-ready commercial agreements, regulatory compliance by design, appropriate employment agreements and jurisdiction-specific employment considerations.

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Transcript

Michael Grantmyre: Hello, today we will be discussing the commercial and employment considerations that typically arise for a company at the series seed stage. I'm Michael Grantmyre, a partner in Osler's Emerging and High Growth Companies group, and I'm joined by Steve Dickie, a partner in our Employment and Labour group. And Simon Hodgett, a partner in our Technology group.

Simon Hodgett: Thanks, Michael.

Steve Dickie: Hi, Michael.

Michael Grantmyre: Great, so before we dive into some of the commercial and employment considerations that I mentioned previously, I just wanted to touch on a few corporate matters that are important to keep in mind at the series seed stage level. So, first of all, you've just taken in some new capital, which means you've got some investors on your cap table and so it's a good time to refresh and think about investor relations and how you communicate with investors and what that cadence looks like. It's also a great idea to think about cap table management going forward. And so considering the advantages of table software would also be a really great idea. And then finally, financial reporting is something that most companies that have taken on capital are required to do, and so you should consider updating your accounting systems to support the continued growth and investor scrutiny as you continue to build your business. So with that said, I'll turn it over to Simon and Steve and maybe ask them a few questions on the commercial unemployment front. So Simon, maybe to start with you, can you give us your feedback and thoughts on some of the early considerations on the commercial front, and what you would recommend for meeting

the evolving needs of companies that are raising capital?

Simon Hodgett: Well, I think at this stage, Michael, there's a few things to bear in mind. One is that although there's constrained resources in the company, it's very early stage in the company, it's a good time to think about how you're going to approach commercial contracting. Commercial contracts, particularly with customer agreements, are an extension of the business and they're a selling tool. If they're done properly and they look professional, it is a real help to the business. So what we usually suggest is that we stand up some good quality agreements, and here at Osler we've put in place a process, a whole process to be able to do that for companies at this stage with respect to the customer agreements that take into account the business that's being established here at this stage in the development, and ensure that it puts the best foot forward when the client goes out to the market. So that's one thing. And the other is to start to really think about what the business looks like and whether or not that's reflective in the agreements. We want to make sure that, when a customer looks at it, they don't say, well, this is just a template. It's got no relationship with the agreement. No, it's got actual thought put into it as to how it aligns with the agreement with the business and how it will be projecting forward into the future for the company.

Michael Grantmyre: Awesome. Thank you very much Simon. Steve, maybe to get some thoughts from you on employment considerations and things that companies should be keeping in mind now that they've just raised their first bit of capital.

Steve Dickie: Thanks Michael. The key, if you only do one thing right, as an emerging company, it's to have proper employment agreements that are appropriate for the jurisdictions in which you're hiring. It cannot be overstated. A written employment agreement in Canada is your keystone for all HR risk management. While these agreements don't solve every single conceivable problem, they almost always make every single problem less bad. What does that mean in practice? It means you need to partner with a true expert, no ChatGPT, no downloaded forms, HR consultants. You need specialized employment advice in order to get this right and protect your company, protect your investors, and ensure that you're setting the playing field for upside for everybody, as opposed to constantly putting out fires or paying out settlements that are a lot more than maybe you budgeted for or anticipated. And the reason for that is employees in Canada have very valuable default rights under the common law. It works a little bit different in Québec. The point is to contract out of those default common law protections and instead contract into a much more palatable range of minimum legislative requirements, governing things like termination and severance entitlements. Because, let's be honest, no company gets a 100% of their hires a 100% correct all of the time. And so, the number one issue we often see with early stage companies is not paying attention to the details, or investing in preventative medicine leading to a lot more work and a lot more cost either when something goes wrong or to fix things up on a future diligence round. So, the key is don't adjust things on the fly, don't start drafting termination clauses on your own, really find a partner to lean on so that you're getting the right advice to manage risks in your business. And I think last point on this, I mean process is just as important as substance when it comes to employment agreements. We don't backdate employment agreements and employees have to, in Canada, sign their agreements before they start working. Otherwise there's a risk that they're going to be unenforceable. Most of the time we can fix those issues, but not once the relationship has already broken down. So it's important to follow both the right steps and have the right documents in place effectively manage risk in this area.

Michael Grantmyre: That's awesome, Steve. Thank you for that. And Simon, just to turn back to you, in this day and age, privacy and data security are becoming ever more relevant and, as companies continue to grow their business, thinking about the stage of company we're talking about today, can you maybe just highlight some key points from your perspective?

Simon Hodgett: That's absolutely right, and particularly with so many of our clients involved

to one degree or another with artificial intelligence, which relies on proper use of data and acquisition of data, that there are proper rights associated with it. So I think that is important from the earliest stages and hopefully by this stage in the development of the company to have adopted a compliance approach that really has it built in. It should be compliance by design, and that could be privacy, which is important to have basic privacy policies in place to start fostering a culture of respect for privacy within the organization, even at a relatively early stage. And then there may be other compliance issues. There may be issues if you're selling into financial services or you're selling into the healthcare system, or obvious examples where there really has to be some thought in the product, design collection of information, and all of these factors to ensure that the company is building out compliance.

And that becomes really, really important as the company now scales from this point onwards. Many times companies get set up and there's a fair bit of leeway given for compliance issues because everybody knows the resources are limited and so on to set that up. But at this stage, you should really be starting to see some compliance practices. Some policies should start to see that the privacy policies are quite specific to how the information is being used and how it's being collected and have a very serious attempt to maintain compliance. So for what I would say from this point, it's important to manifest that within the business and have the right people, the right processes and so on developing. Now, it will become much more sophisticated as the company scales, but this is really where it starts to get pretty sophisticated on the compliance side.

Michael Grantmyre: That makes sense. Thank you Simon. Steve, just for our final topic, to go back to you, you mentioned Québec and some of the considerations around that and what you were discussing previously. Can you maybe speak to a little bit more about the jurisdiction considerations when we think about hiring employees in Canada?

Steve Dickie: The vast majority of venture-backed businesses are going to be provincially regulated for the purposes of employment law. It means that you're going to need to pay attention to province-by-province differences when it comes to various employment laws. And there are real differences between common law provinces like Ontario, British Columbia, and Alberta, but at a very high level, the principles are similar, if not identical. Québec is a bit of a different story, and I think this applies in more realms than just the employment realm, but there's often a Canada and then the rest of Canada and then a Québec sort of playbook for managing legal compliance and mitigating risk. And some of the things amongst others that you need to keep in mind in operating or hiring in Québec is French language laws and the use of French in the workplace, as well as under the general law of Québec, the civil code termination clauses and employment agreements are not necessarily enforceable or binding on courts.

So that can lead to a little bit more unpredictability in how you contract with your employees. And then lastly, but importantly, after two years of employment, many Québec employees obtain union-like job protections, which makes it more difficult to make changes to your workforce, including for poor performance. And so it's key that, when hiring in Québec, which can be a great jurisdiction, lots of talent in the tech sector, especially in the greater Montréal area, that you also institute systems to ensure that you're doing employee reviews and making decisions on team members at around the 18 to 20 month mark before you cross that important threshold. I would say the last thought sort of in the employment space is that I said, if you do one thing right, it's that you have proper employment agreements. If you do two things right, it's probably to have a workplace violence and harassment policy.

This is, amongst various statutorily-required policies, this is the one we commonly see coming into play the most, given changes in the workforce and different perceptions about workplace norms and expectations. And having a policy in place that conforms with the statutory requirements in the jurisdictions where you have employees can save you a lot of headache. And even on founder issues and founder divorces, we've seen the lack of a policy

on these topics weaponized in certain respects. So in terms of protecting the company and protecting the business, it's key to have sort of a checklist and a triage list to go down as you work on your compliance journey in the employment space.

Michael Grantmyre: Thanks a lot Steve, and thank you Simon as well to both of you for your insight and perspective on some of these really important points for companies as they continue to grow. And just a reminder for company founders looking at this video, please do feel free to reach out to Osler and particularly Steve and Simon on the employment and commercial technology front if you do need any support on any of these areas. Thank you very much.

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