



# Founders' Agreements: *What you need to know*

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# Overview

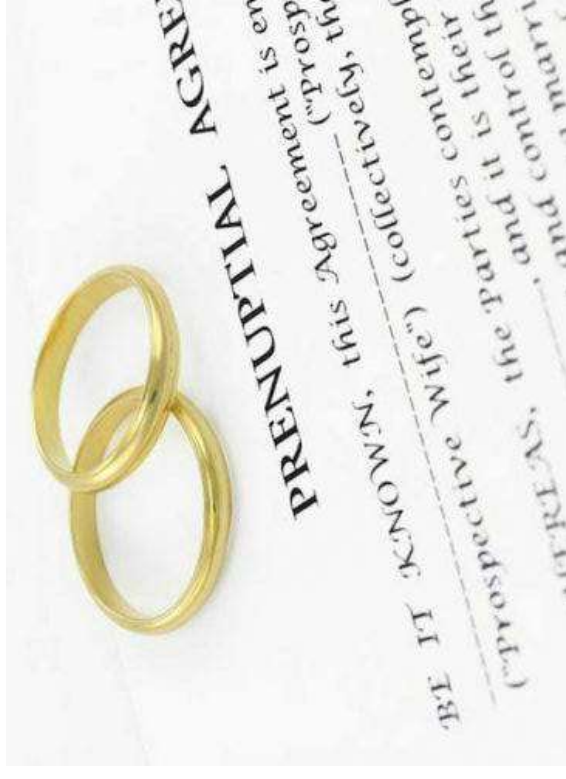
1. Founders' Agreements (Overview)
2. Dividing Equity
3. Key Terms to Consider



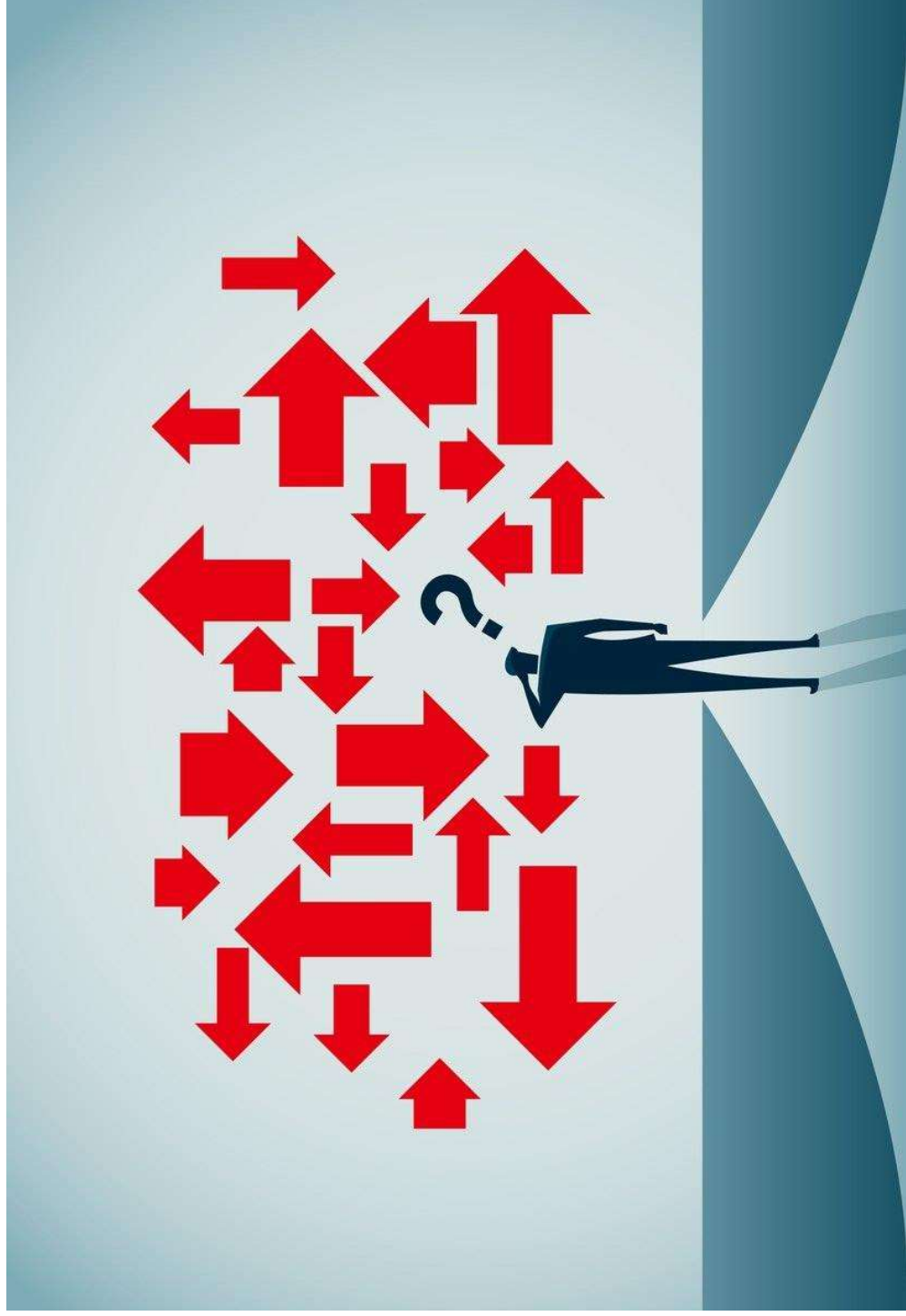
# Founders' Agreements (Overview)

## What is a Founder's Agreement?

- A document (or set of documents) that addresses ownership of, fundamental protection of, and other restrictions relating to the company, including:
  - Issuance/division of equity
  - Vesting and acceleration of equity
  - Confidentiality
  - Transfer of:
    - IP Ownership
    - Business Plan
    - Ideas
  - Transfer restrictions (e.g., ROFR/buy-sell)



# Dividing Equity





# Dividing Equity

## Key Questions

- What? *Splitting the (initial) pie...*
- When?
  - *Early to avoid controversy (e.g., 50/50)*
  - *A little later once roles are more clearly defined*
- How?
  - *There is no right or wrong...*
  - *Equity calculator examples:*
    - <http://foundrs.com/>
    - <https://www.planprojections.com/calculators/startup-equity-calculator/>



# Impact of Equity Split

## Think toward the future

- Avoid issues down the road by signing the “pre-nup” now
- Companies with equal equity splits among co-founders could have a more difficult time raising capital (especially from VC firms), per a Harvard study

# Key Terms to Consider

## Vesting

- How is a vesting schedule determined?
- Time based vs. Performance based
- Common Schedule: 4 years (1-year cliff; quarterly thereafter).
- Founders should not be afraid to impose a vesting schedule on themselves. Send message to capital markets & allows owners to set terms.
- What is the impact on vesting for future funding?
- What happens when a founder leaves?

# Key Terms to Consider

## Acceleration

- Acceleration upon Termination Without Cause/Resignation for Good Reason
- Acceleration upon “Change in Control”
- Single vs. Double Trigger Acceleration
- Acceleration is usually limited to founders and key management team
- Acceleration can be unattractive to a buyer since it eliminates the current employment scheme & creates incentive for flight



# Key Terms to Consider

## IP Ownership

- Transfer IP created prior to incorporation.
- Absent an IP assignment transferring ownership of the IP to the Company, any IP by the Founder(s) prior to the incorporation of the company will be owned by the Founders, not the Company.
- IP is typically assigned when a Founder purchases his or her shares.
- Ensure IP that is being developed on a go-forward basis belongs to the Company and the individuals that created or developed the IP.

# Key Terms to Consider

## Restrictive Covenants

- Non-Disclosure/Confidentiality
- Non-Competition
- Non-Solicitation
- These terms are usually baked into the same agreement that covers go-forward IP

# Questions?

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