

Next up in our long list of other terms, most of which don't matter that much, is information rights.

Clint: Information rights – what are they?

Brad: Investors love to have as much information on your business as possible, so in the term sheets are some defined information rights. These are things like financial statements of a periodic basis, access to books and records, things like that.

For all practical purposes, most of your investors are going to have access to any information they want in the business, so in a lot of ways information rights is just another restatement of what they have access to.

However, there are a couple of interesting situations.

One is you may have some really small investors. These investors might have invested \$10,000 or \$25,000 in the seed round, they're not really material investors in the company. As a result, the idea that they would get the same information rights that a 25% or 30% investor in your company would get doesn't make that much sense. Oftentimes you'll see the information rights delineated by major investor and there being some threshold associated with what being a major investor is.

The other thing that has come up more recently is that a number of venture firms make lots of small investments at the seed level and in some cases might end up being investors in competitive companies. The idea that an investor has a small amount of investment in your company, but has complete information right access to what's going on, and then goes and makes a much larger investment in some other company that is directly competitive doesn't feel very good.

This phenomena happens and the VCs will say, "Don't worry, we have a Chinese wall," or some such way of managing this content. That's all awesome, until you get an email intended for the CEO of your competitor that's sent to you by the VC because the VC confused in their brain which company was which.

For really small investors or investors who invest small amounts of money, limiting their information rights makes some sense. For your major investors, fighting with them and arguing over the specific information rights can get kind of nonsensical.

Student: Are there any protections that the entrepreneur can build into a term sheet or a final deal that prevents an investor from then going and investing in a competitor?

Brad: It's difficult to get an investor to agree not to invest in a competitor, in the same way that it's difficult to get an investor or a VC to sign a nondisclosure agreement or something else. The recourse dynamics if something like that happens are weak, and the last thing the investor wants is to get tangled up in a lawsuit around that. Frankly, it's a waste of the company's time too.

Understanding your investors and doing your research on the investors and knowing how they behave is super important, much more important than trying to structure that legalese into the final document. Doing your own diligence on the investor rather than just relying on them to say, "I'm really good, you'll like me a lot. I'm great and I'll never do anything that would harm your company."

Recognize also that even if the investor has a competitive investment, you do have in the terms of documents that you sign with them things like confidentiality agreements and they do have a responsibility to your company. So the idea that they would be taking your documents and shipping them off to another company willfully and purposefully is almost certainly unlikely to happen, and in many cases you'll have some protections against that.

It's less worrying about that and more about this problem that you had this investor who you thought was really vested in what you were doing and all of a sudden they're invested in somebody else.