

TECH

Equity for time

Growing number of local law firms taking equity in start-ups

By JAKE RICHARDSON
Staff Reporter

In 1998, an immigration judge assigned Arent Fox Kitner, one of the oldest law firms based in D.C., to represent Alexandre Konanykhine for free.

The KGB was seeking to extradite the Russian financier, who once helped back President Boris Yeltsin's government, on what he called trumped-up extortion charges.

Last year, the Immigration and Naturalization Service judge ruled that false and misleading statements were made and gave Konanykhine and his wife political asylum.

Now Arent Fox is representing Konanykhine again — and, like last time, no money is being exchanged. The Washington law firm is providing legal services for Konanykhine's 18-month-old start-up, KMGI.com, in exchange for equity in the company.

Arent Fox and KMGI represent a growing group of start-ups and lawyers who are swapping stock in Internet start-ups — a commonplace practice among Silicon Valley firms — for legal services in the region.

"While it's been done in the past, it's becoming more frequent," said Marc Frankleischaker, the firm's chairman. "We, like a lot of big firms in the East, are considering whether we should have our own venture fund."

He said Arent Fox officials see KMGI, which provides streaming video capabilities to new and old processors, as a possible pioneer in the field of advertising and marketing. He declined to disclose their stake in the New York-based company, which recently opened an office in Tysons Corner.

Taking risks

Frankleischaker said the arrangement isn't much different than taking a case on contingency, where the firm is paid only if it wins the case. It's a risk litigators take all the time.

"We are not doing this with just any company," Frankleischaker said. "We'll



Alexandre Konanykhine, president of New York-based KMGI.com, agreed to give an undisclosed equity stake in his company to D.C. law firm Arent Fox Kitner.

weigh the amount of risk, the probability of success and the reward potential."

Arent Fox Kitner is one of the few firms that specializes in technology without a Northern Virginia address. Most firms — especially the giants from Silicon Valley — have opened offices in Virginia. They include Wilson Sonsini Goodrich & Rosati, one of the first firms to take an equity position in a start-up, and Cooley Godward.

"There's a growing number of significant engagements dealing with start-ups," said Joe Conroy, the partner in charge of the Reston office of Silicon Valley's Cooley Godward. "It's still uncommon, but that trend is changing rapidly."

Even Arent Fox is considering opening a Northern Virginia office to take advantage of such opportunities, but partners are wary.

"We don't want our attorneys cannibalized by West Coast firms that are looking to gain a presence in the area," Frankleischaker said.

Ethical issues

The firms in the Washington area that

have worked for equity are firms based out of California. Most of those firms take small percentages — usually 1 to 5 percent — to avoid ethical issues.

Possible ethical issues include whether an equity stake impairs the attorney's ability to remain unbiased, Conroy said. The concern that firms taking equity are at risk for possible litigation weighs heavily on the minds of Greater Washington's legal community. If technology bubble pops, many lawyers think lawsuits will be the last resort for some.

But because the market is so hot right now, the biggest firms in the Valley and the D.C. area seems to be following suit — have the luxury of advancing carefully as they weigh the risk of providing services for equity.

But local firms feeling the heat from their Valley competitors have turned to taking equity, said Tom Antisdell, vice president of Infirmation.com, an Internet resource for attorneys.

"There are almost no local firms that do it as a practice," Antisdell said, "but they are all considering it now."