

GETTING YOUR STARTUP READY FOR SEED FUNDING

WHEN IT COMES TO RAISING YOUR FIRST FINANCING, MANY FACTORS ARE CRITICAL. SUCCESSFUL STARTUPS NOT ONLY HAVE AN EXCELLENT TEAM, A SCALABLE BUSINESS MODEL AND A CONVINCING BUSINESS PLAN BUT ALSO A SOLID LEGAL DOCUMENTATION IN PLACE. THIS ARTICLE SETS FORTH THE CRUCIAL TO DO'S FROM A LEGAL PERSPECTIVE.

TEXT:

*DR. MICHAEL TSCHUDIN
UND DR. MICHAEL BAIER*

Corporate structure – shareholders

In order to build confidence and trust, the founders should incorporate a legal entity (a stock corporation (AG) works best in Switzerland). Shares should only be issued subject to a market standard shareholders' agreement, which ensures that shares are not sold to third parties without a pre-emptive right / right of first refusal of the existing shareholders, and that founders' shares are subject to a (reverse-)vesting.

Shareholders should generally be operative in the startup or at least contribute a strategic advantage. Usually, the operative founders should hold around 70 percent or more of the issued shares. Should this not be the case, the incentives for the founders should be increased by additional means or the founders should consider diluting the non-operative shareholders.

The most significant financial incentive for the founders should derive from increasing the company's valuation, rather than from salaries and bonuses. This aligns the interests of the founders and the investors. The same holds true in relation to employees, so an effective employee participation plan is key.

Legal protection of technology

All IPs necessary for the business model need to belong to the startup. While a

licence from the founders to the startup may be sufficient in the beginning, no investor will fund a startup which depends on a licence from a founder (or worse, a third party). In addition, all IPs generated by employees should be assigned to the company as part of their employment contracts. An appropriate trademarks strategy should also be implemented.

Customer agreements

In most cases, the future turnover and therefore the business case, is based on existing and future customers. Customer agreements should be drafted carefully in order to legally facilitate future turnover. While close cooperation with partners may be an asset, such cooperation should in no way restrict the startup company's freedom to operate. Consequently, the scope of exclusivity clauses should be limited in terms of the use case, and in relation to their duration. Presenting state of the art customer agreements to a potential investor increases the chances of receiving funding.

Conclusion

Investors look for startups, which are ready to grow. An important requirement for sustainable success is the corporate and contractual basis of the business model. Leverage your counsel's experience!



**Dr. iur. Michael Baier,
Attorney at Law**

Focus: venture capital and private equity financing

e-mail: m.baier@wengerviel.ch



**Dr. iur. Michael Tschudin,
Attorney at Law**

Focus: digitalization and data law, start-ups and competition law

e-mail: m.tschudin@wengerviel.ch

About Wenger & Vieli:

- Employs around 60 experts
- Offices in Zurich and Zug
- Nationally and internationally active
- Personal and individual advice by small teams

Competences in relation to startups:

- Thanks to their digital lawyer, legal documents can be created easily and efficiently. Perfect for startups!
- Partner of the Entrepreneur Club Winterthur
- Premium partner of Swiss Startup Invest

wenger & vieli
Attorneys at law