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CHECKLIST

VERSION 2021

Banks & Financial Services Providers
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Pharmaceutical & Health Law
Restructuring & Insolvency
Tax Law
Venture Capital & Private Equity
White-Collar Crime

Maximizing Your Potential

12 tips for building a successful start-up

If certain actions and decisions are neglected, they cannot be reversed and WILL affect your profit in the future. Besides hiring people who are a good cultural fit and smarter than you, keep the following steps in mind:

1. Incorporate a legal entity that is well known to investors and has a flexible capital structure ("AG", rather than "GmbH"). Make sure that all IPs generated pre-incorporation are correctly transferred to the company. Make sure that from the very beginning any and all shares are covered by a state of the art Shareholders Agreement (including drag along).

2. Define the short, medium and long term funding strategy of your company at the beginning. Developing an appropriate funding strategy is crucial to the success of your company and will impact who controls the company in the future and your profit upon exit. What is your "Funding Strategy"?

- If you can, raise money at true value inflection points; i.e. when measureable milestones are reached and your company is much more valuable for having achieved them. Talk to an experienced VC player in order to identify the relevant milestones of your growth story.
- What is the funding amount required to get (comfortably) from one inflection point to the next? Do a headcount and cash burn analysis.
- Identify the appropriate Funding Sources to match the Funding Strategy, Friends & Family, high net worth individuals, angels, VC's or strategics.
- Identify the appropriate Funding Instrument to match the Funding Source (Common Stock, Preferred Stock or Convertible Debt).
- Ensure that specific preferential investors' rights only apply if and under the condition that such investor takes part in future investment rounds ("pay to play").

3. Don't let your product building, sales and marketing, personnel costs or IP strategy get ahead of your Funding Strategy (all should align).

4. Develop an appropriate IP strategy. In most cases there is protectable IP, and sometimes adequate protection can be achieved quite inexpensively. Every investor would like to see a sustainable, competitive advantage based on well protected IP. Identify your IP, secure ownership of your IP and manage you IP. Have the maximum IP protection clauses in your employment, freelance and confidentiality agreements.

5. Founder issues:

- Allocation of founder's stock: Somestimes "co-founders" are really just early employees. So allocate stock based on expected short & long term contributions and ensure that it's reasonable, given the other hires required down the road.
- Also, avoid transferring founders' stock post incorporation: from a taxation point, this is a nightmare for founders. Founders should, whenever possible, subscribe for all of their founders' stock at incorporation.
- If considering VC funding or if there are several founders, think about (reverse-)vesting

Wenger & Vieli Ltd.
Dufourstrasse 56
P.O. Box
CH-8034 Zurich

Office Zug
Metallstrasse 9
P.O. Box
CH-6302 Zug

T +41 58 958 58 58
checklist@wengervieli.ch
www.wengervieli.ch

on founders' stock (avoid the "free rider" dilemma – it generally cannot be fixed afterwards). Provide for sensible good leaver/bad leaver rules from the very beginning with the company's growth/exit perspectives in mind.

- What is the appropriate vesting period/upfront vesting? Ask the question: "If Sandra leaves in 6/18/36 months, would the percentage vested be appropriate given the expected value contributed by her to that point?" If not, the vesting period is too short. Is acceleration appropriate?
- Consider milestone based vesting if appropriate (e.g. for technical co-founder) if their contribution will be critical/beneficial for the company in reaching the value inflection points (or a combination of time & milestone based vesting).

6. Issuance of stock to founders, employees and advisors – rarely, if ever, should stock be issued that is not subject to vesting.

7. Have an appropriate amount of shares or an option pool reserved to incentivize employees (and advisors). What's appropriate? Look at the shares or options you anticipate issuing in the next 12 months. It's very easy to increase the number of shares or an option pool. Options can and will be used when negotiating the pre-money in a funding round. Be aware that the investors value your company on a fully diluted basis.

8. Build a strong board of advisors to, among other things, fill the gaps in your team's core competences (if you cannot afford to buy the skills early on, rent them or grant them shares or options). Get in touch with innosuisse (https://www.innosuisse.ch/inno/en/home/start-and-grow-your-business/start-up-coaching.html).

9. Avoid structures and business arrangements (exclusive licensing/manufacturing/distribution arrangements/specific right of first refusals) that might lower your pre-money valuation or make you unfundable or unattractive to any other acquirer.

10. Find a good lawyer that lives and breathes start-ups. Free advice from your neighbour's sister, who is a real estate lawyer, will probably result in a set up that has to be fixed later on (and will invariably affect your profit). Leverage your counsel's experience and contacts.

11. Employee participation schemes are key. Do it right from the beginning. Seek advice from experienced start-up advisers to ensure that you have covered all aspects (including taxes). Fixing issues leads to higher advisory fees than having things done right from the beginning.


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12. Your mind is and shall be business focused but do not forget the whole tax and legal compliance area. Investors and potential buyers will perform a due diligence at the time they might get on board or acquire your company. If properly prepared, you can be relaxed.

About our Start-Up and Venture Capital Practice Group

Wenger & Vieli's Start-Up and Venture Capital Practice Group assists start-ups, emerging growth companies and VC investors in various fields, including information technology, telecommunications, life science, cleantech, impact investments, cryptocurrencies, block chain technologies, crowd funding, and many more. Furthermore, Wenger & Vieli is a leading Swiss advisor of national and international corporate venture teams.
Our subsidiary WTS Consulting Services AG, Zurich, is designed to render accounting services to start-ups in a highly cost efficient way.
We see young entrepreneurs and start-ups as the very core of our firm's and our young lawyers' future. Having a strong focus on start-ups and venture capital, Wenger & Vieli strives to invest into your venture's success and – by doing so – into the future of our own firm.


MARC WALTER
Senior Associate
m.walter@wengervieli.ch
T +41 58 958 53 58


PASCAL HONOLD
Partner
p.honold@wengervieli.ch
T +41 58 958 55 44


PATRIC EGGLER
Senior Associate
p.eggler@wengervieli.ch
T +41 58 958 51 01


MICHELLE WIKI
Associate
m.wiki@wengervieli.ch
T +41 58 958 53 41

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