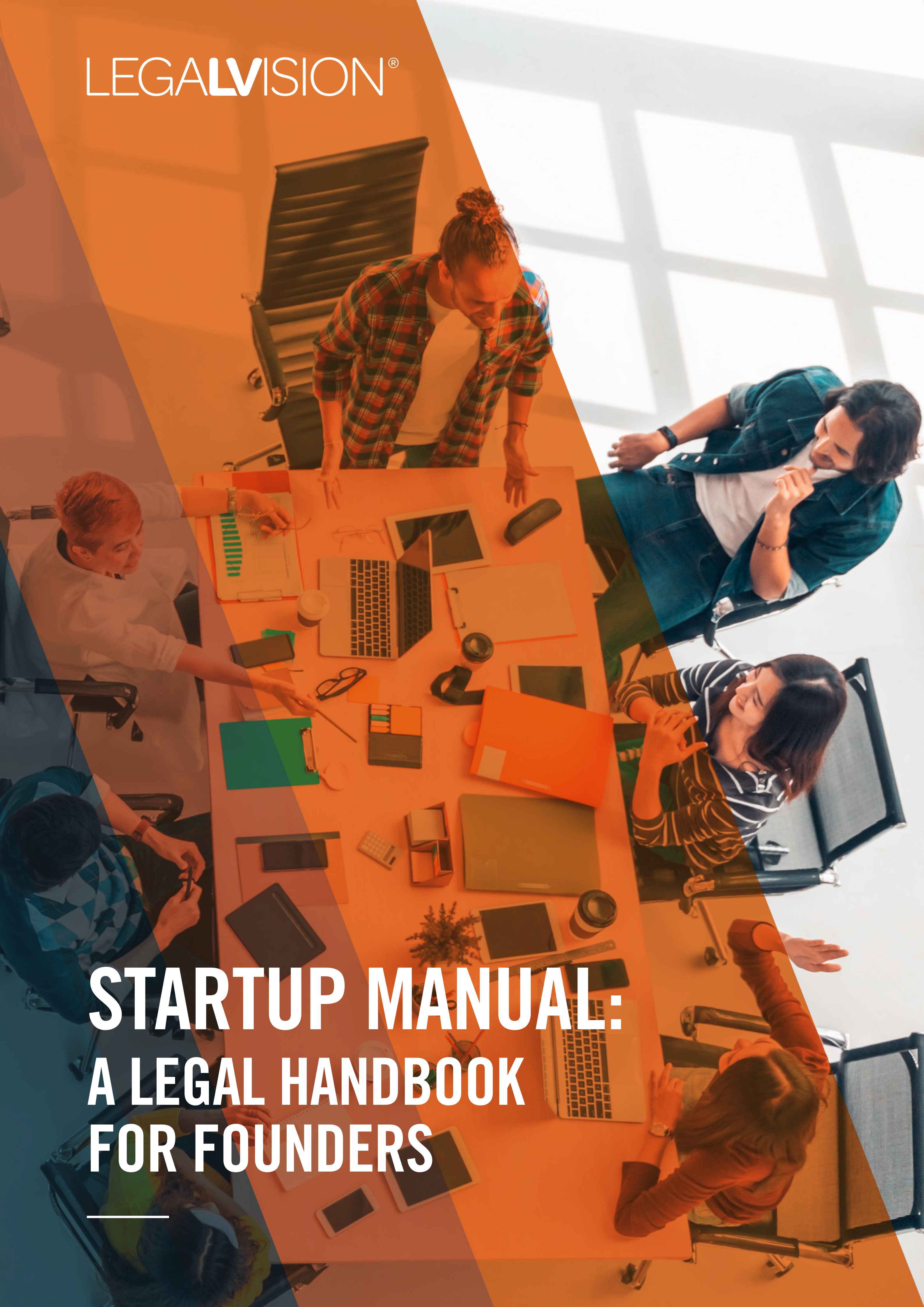


LEGALVISION®

STARTUP MANUAL:
A LEGAL HANDBOOK FOR FOUNDERS

CONTENTS

FOREWORD

Having your legal structure and agreements in order may be the furthest thing from your mind when starting out on the road to greatness. Additionally, legal agreements are there to discuss all of the sad and awkward scenarios upfront. But boy does it all make a difference if you start to take off.

Having the right legal foundation in place will not make you successful, but it will prevent you from failing when things start to go right.

When we first started investing in Australia, there were no standards like there are in Silicon Valley, and local startup financings had many strange and arcane terms included. Through the rise of the startup community in Australia over the past decade and through guides like the one you are about to read, that has all changed. You will see the way raising money for startups should be done.

The team at LegalVision have translated all the core concepts of the startup game into Australian law. Since the first version of this manual came out, the startup ecosystem has grown in leaps and bounds, but the information contained inside is as relevant as ever – a true testament that they have stood the test of time.

Enjoy the read and all the best for your own startup journey.
To the moon!

Niki Scevak
Co-founder of Blackbird Ventures

ABOUT THE STARTUP MANUAL

Over the past few years, we have provided advice and guidance to hundreds of startups. Startups face numerous challenges, but in the legal context those challenges can generally be divided into the following:

- Structuring your company
- Raising capital
- Building a team
- Dealing with customers and suppliers
- Protecting your intellectual property

Knowledge is power, so to help our clients, future clients, and the broader Australian startup ecosystem, we have put together a comprehensive summary of the issues startup founders need to look out for through their journey in this startup manual.

To provide a complete overview of the issues, we have reached out to a number of Australian venture capitalists and entrepreneurs to provide insights into their areas of expertise. Special thanks to the contributors who have offered invaluable insights and lessons to include in this manual as case studies: John Henderson (Partner at AirTree Ventures), Rohen Sood (Investment Manager at Reinventure), Matt Schiller (CEO of Snappr), Sam Wong (Head of Operations at Blackbird Ventures), Karthi Sepulohniam (Director at Partners for Growth Australia), Cliff Obrecht (COO of Canva) and Kate Pullinger (Head of Legal at SafetyCulture).

This manual should be treated as a "how-to" guide for founders, future founders, and broader startup management teams. As the startup ecosystem is ever-evolving and developing, this version of the manual contains new forms of funding, a look at how the overseas venture capital market is infiltrating our own, and considerations for later stage startups as well as new. We have also included a new section on directors' duties, insurance, and accounting to help you protect yourself from every angle. We have aimed to cover all the big issues, but of course every startup is different!

Authors

Lachlan McKnight
CEO

Jill McKnight
Practice Group Leader

Madeleine Hunt
Senior Lawyer

STRUCTURING YOUR COMPANY

Before you can raise capital, hire employees or start selling to customers, you will need to set up your startup's corporate structure. This section of the manual covers:

- how a dual company structure works
- the benefits of setting up a discretionary trust

Your goal here should be to minimise risk and cost while maximising flexibility.

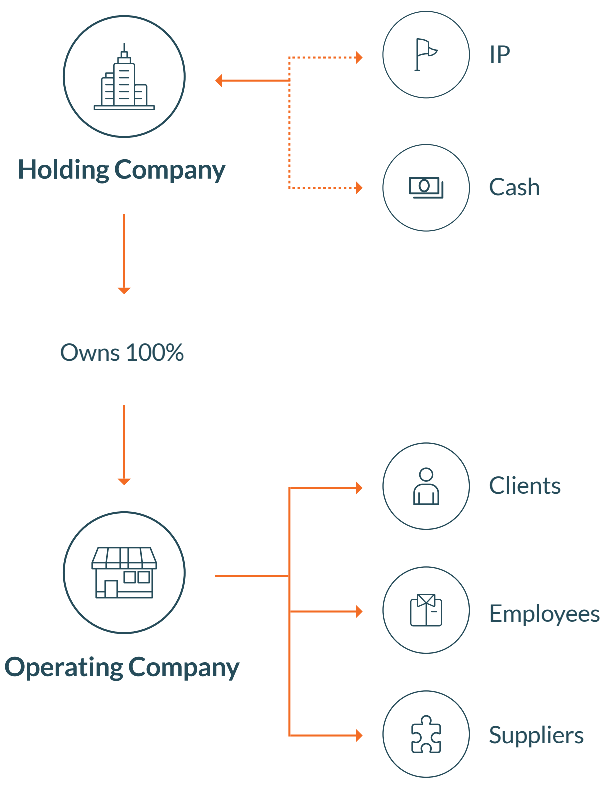
SETTING UP A DUAL COMPANY STRUCTURE

A dual company structure involves a holding company that owns 100% of the shares in a subsidiary operating company. An operating company is the entity that enters into contractual arrangements with clients, suppliers and employees. The holding company will generally own the startup's intellectual property (IP), as well as any recently raised capital.

A dual company structure makes sense because, in most circumstances, the holding company generally protects the startup's major assets (IP and excess cash) from any liability that the operating company incurs. In the scenario where a customer sues your startup, then they will have to sue the company that they have the legal relationship with (i.e. the operating company). In a dual company structure, an operating company will hold fewer assets. While you cannot anticipate being sued, this extra layer protects your company's most valuable assets.

Setting up a holding company requires incorporating an additional company. Consequently, it is costlier to implement and maintain. There are also some limited instances where the holding company may be responsible for an operating company's action/inaction, such as fraud or other improper conduct, or if the companies are found not to be under separate management in the event of liquidation.

Dual Company Structure



BENEFITS OF DISCRETIONARY TRUSTS

Founders can use a discretionary trust to own their shares in their startup (rather than owning them personally), which makes sense for several reasons.

Asset Protection: If you are a director of your startup, you could be held personally liable for debts incurred under certain circumstances (e.g. fraud and wilful negligence). Owning your shares through a trust rather than in your own name offers some protection to your shares. However, if debtors are at a stage where they are going after you personally rather than the company, your shares in the startup are likely worthless (unless, of course, you have a dual company structure to protect the business' assets).

Tax Planning: In the event of a significant exit, or if your startup chooses to distribute dividends (which is unusual but not unheard of), a trust can be more tax efficient than owning the shares personally or through a company. The trustee has the discretion to distribute the trust income. So, the trustee can distribute to beneficiaries with lower marginal tax rates (e.g. a partner who is not working) for tax planning reasons. Trusts, or individuals that have held their shares for more than 12 months, could access a discount on capital gains tax when they sell their shares. The size of the tax benefit generally depends on the government of the day, so it is important you speak to a tax advisor when deciding on how to own your shares.

Benefits of a Discretionary Trust

- Asset protection from creditors
- Flexibility in distributing income and capital
- Flexible for tax planning
- Beneficiaries of a trust are generally not liable for the trust debts
- Entitled to a discount on capital gains where available

CORPORATE TRUSTEES

When setting up a discretionary trust, you will need to consider whether you wish to appoint an individual or corporate trustee.

While a corporate trustee allows for additional protections (particularly, limited liability), this requires you to incorporate another company and increases your setup and maintenance costs. Importantly, you cannot be both the trustee of a trust and the sole beneficiary. A trust structure will then only make sense where there are other people (e.g. family members) who you can distribute income to under the trust. So, if you have a partner who makes more than you and no children, a trust may not be sensible in the short to medium term.

Discretionary Trust Structure with Corporate Trustee

Discretionary Trust

↓

Corporate Trustee
(limited by shares)

Hold the shares in the Holding Company as trustee of the Discretionary Trust

↓

Holding Company
(limited by shares)

Holds the shares in the Operating Company

↓

Operating Company
(limited by shares)

RAISING CAPITAL

One of the most common queries we get at LegalVision is how a startup should go about raising capital. We have not only assisted hundreds of companies through the capital raising process, but we have also raised five rounds of capital ourselves since we launched in late 2012.

This section of the manual covers:

- questions a founder should ask before looking to raise capital
- different structures to consider when raising
- how you should document your capital raise from a legal perspective

TO RAISE OR NOT TO RAISE?

The moment you raise a round of capital, you begin answering to someone other than yourself and your co-founders. Investors are generally looking for a return on their investment, which means a **future liquidity event** must be on the cards. Before raising any external capital, you need to ask yourself if this is a path you want to go down. Many startups will simply have no chance of succeeding without raising external capital. While external capital has the potential to help you supercharge growth, it is not necessary to build a fast-growing, profitable business.

A great way of working out whether raising external capital makes sense for you is to speak to founders who have raised, either from angel investors, VC or corporate investors. The Australian startup community is friendly and supportive - if you are prepared, focused and obviously not a time waster, most founders will be up for a 30-minute chat over coffee. So, reach out through your connections, speak to some founders who have raised external capital, and use those conversations to make a decision. If you are lucky enough to be working out of an accelerator or other co-working space, there will likely be dozens of other founders around who will be happy to speak with you about this issue and have plenty of tips and tricks which may assist.

Finally, ask yourself, **will you increase the value of your shareholding in the company by taking on external investment?** External investment will dilute your shareholding in your startup. So, you should only raise capital if you think doing so will increase the value of your stake.

What is a future liquidity event?

Although Venture Capitalists have longer investment horizons than most other investors, they still need to deliver a return to their limited partners (i.e. the investors who have put cash into the Venture Capital (VC) fund that has invested in your startup). The only way to achieve this is for the VC's investment to become 'liquid'. There are three main ways this can happen:

- trade sale; or
- secondary transaction; and
- initial public offering (IPO).

A trade sale happens when you sell your startup to an acquirer (generally a larger corporation). A secondary transaction involves your VC investor selling their shares in your company to another investor. An IPO means listing your company on a stock exchange.

WHAT ARE YOU LOOKING FOR IN AN INVESTOR?

After you have decided to raise a round of capital, you need to start thinking about the most appropriate investor.

In many ways, the investment community will dictate this decision. If you are looking to raise $20 million, a friends and family or angel round is not going to make much sense! On the other hand, if you are looking to raise a $200,000 seed round, you should steer away from VC funds and look to fill out your round in the angel community.

Another consideration is looking for investors who can contribute to the success of your startup beyond just providing cash (also called 'smart money').

Within the angel investment community, some of the best investors will open up doors for your startup, whether to VCs for future fundraising rounds or to customers (particularly in the enterprise sales space).

Quick Tip

Speak to startup founders who have received investment from your potential investors.

Many people talk the talk but do not walk the walk. Once you have brought an investor on board, they will usually be on your cap table for a long time. It is also possible that choosing one investor will close the door to a relationship with others. If you are lucky enough to have more than one option, make sure you take the time to think seriously about who would be the best investor.

An advisor is asking for options or stock - what should I do?

We are of the view that you should steer well clear of an advisor (lawyer, accountant, business advisor) who asks for shares or options in your startup. There is no real reason for founders to issue shares or options to anyone other than investors and employees. Unfortunately, there are a number of less scrupulous business people that are plugged into the fringes of the Australian startup community who will occasionally try to get their hands on the shares of a promising startup. Do not be a mark!

UNDERSTANDING THE FUNDING PROCESS

So you have decided to bring on board investors to help your business grow. There is a start-up funding process that is generally followed, and if you are new to start-up funding, it is worth familiarising yourself with the terminology and steps. While this process can be fluid, the Start-up Funding Process table will give you some understanding of what to expect.

Startup Funding Rounds

Family and Friends
Funds raised from family and friends to kick start your idea in return for a small amount of equity.

Seed Round
Another small round of fundraising (generally from angel investors) to build your product and cover expenses.

Series A
A startup's first major round of investment, often involving venture capital investors and fuelling the launch of the product.

Series B
This stage is focused on continuing to scale the company. It is likely that its business model has been established and there is traction with customers.

Series C onwards
Subsequent venture rounds are used to scale the company, make acquisitions, maximise market share, grow internationally and prepare the company for an acquisition or public listing.

TYPES OF INVESTORS AND WHAT THEY ARE LOOKING FOR

Type of Investor	What they are looking for	Pitch tips
Friends and Family	They want you to succeed! Generally, a financial return is a secondary consideration for friends and family.	Do not overvalue your startup at this early stage. It is not fair to you nor future investors.
Angel Investors	Very variable. Some are looking for 'home runs', others are looking for a good risk adjusted return. Angel investors are a very diverse bunch, and it is fair to say that Australian Angels are somewhat more conservative than Angels in Silicon Valley.	Angel investors will be looking at your potential as a founder and your key team members. A good idea is nothing without good people behind it.
Micro-VC	Micro-VC funds offer smaller scale investment usually in a seed round. Mostly managed by experienced investors looking to get in early with the next big thing (and take more of a risk in doing so).	Micro-VC funds fill a gap in the market for financing early stage companies. Research the investment thesis and areas of focus for different micro-VC funds and find one that aligns with your startup.
Institutional VC	Institutional VC funds can participate in any funding round but more commonly get involved post-seed round. They can provide large scale investment but often will ask for a degree of control in return.	Institutional VC funds are looking for startups that have gained traction and are growing fast. Show evidence that highlights your startup's growth.
Corporate VC/ Investors	Many large corporations now have their own VC arms. Others large corporations will simply invest on balance sheet. Corporate VCs are generally looking for the same things as institutional VC funds - to invest in high-growth startups that will generate an outsized return. Having said that, corporate VCs tend to have strategic objectives.	Remember that corporate VCs/ investors tend to invest in startups that they might end up acquiring. They may even seek a path to control when initially investing.

Quick Tip

Angel investors invest their own money while VCs manage an investment fund.

IS OVERSEAS VC AN OPTION FOR YOUR STARTUP?

Whilst the money being invested into startups by Australian based VC funds is rising promisingly, Australia is still way behind the larger markets such as the United States and China when comparing investment rates on a per capita basis. For some Australian startups, it may make sense to cast the net wider than home when looking for investors. To complement this, we are seeing an increasing interest in Australian startups from overseas VC funds.

Overseas VC may make sense for later stage startups raising larger rounds, such as **Series A, B or C.** Generally, these investors are looking at companies that are already generating revenue and can serve a large global market, particularly the market where the investor is based.

If you are raising a later stage round to allow your startup to expand internationally, consider looking at investors in your next key market. Overseas VC can bring a different perspective, new introductions and local market knowledge. It generally also means more robust due diligence, different expectations of documents, potentially less company-friendly terms and more time away from your business while you meet with prospective investors abroad. Be aware that you may also be required to move the business to the VC's country in the future, or even before the investment is complete. Such a move should be considered carefully, including from a legal and tax perspective, as it is can be a costly and involved process.

INSIGHTS:

THE IMPORTANCE OF CHOOSING THE RIGHT INVESTOR

John Henderson
Partner at AirTree Ventures

Investors look for passionate founders who can find a way through adversity and build great products. But investment is a two-way street. What should founders look for in investors?

One of the most basic and important things is an investor who will not screw up your cap table. As a founder of an early stage company, it is critical you choose the right partners and set your cap table up to be investable later on. The 'wrong' investors can poison your cap table and make it hard for you to raise subsequent funding rounds.

One thing we hate to see is first-time founders giving away too much of their company at the seed stage and agreeing to unfavourable or unusual terms – simply because they are worried about losing an offer. This can distort your cap table and make you less desirable to the best Series A investors.

Startups rely heavily on stock options to attract and retain top talent. They need stellar teams with the right incentives to realise their potential. Your startup will likely require multiple rounds of funding to scale and grow. Each round will dilute the team's ownership in the business. By taking on too much dilution on your first round (or accepting crappy terms), for whatever reason, you make it harder for later stage investors to strike the right balance on ownership and terms, and are potentially damaging your company's long-term prospects.

So, before accepting a seed round, remember:

1. Build a relationship before taking investment. Road test your potential investor. Do they add value? Do they deliver the things they say they will? Do you want to work with this group?
2. NEVER give away half of your company to raise a seed round (67% is the worst I've seen; 10-25% is normal);
3. Raise from people who specialise in making early stage investments. Everything will be smoother and easier. Good investors will invest on standard (e.g. Australian Investment Council (AIC - formerly AVCAL)) terms and will want to set you up for future fundraising success;
4. Complete due diligence on prospective investors (e.g. speak to other companies they've invested in and find how they can help you beyond just capital).

INVESTMENT PHILOSOPHIES FROM LEADING AUSTRALIAN VCS

Blackbird Ventures	Blackbird is one of Australia's largest venture capital firms and invests in startups at any stage. Their fund is based around the concept of 'founders helping founders' and they look to invest in 'Australians wanting to be the best in the world, not the best in Australia.'
AirTree Ventures	AirTree is a large venture capital firm which invests in disruptive business at both seed and Series A+ rounds. AirTree looks for 'world-class Australian and Kiwi entrepreneurs' and has a strong focus on nurturing high-potential founders.
Square Peg Capital	Square Peg invests primarily in tech startups from Australia, New Zealand, South-East Asia and Israel. They look for 'entrepreneurs solving big problems in a differentiated way' who have the passion and ability to scale their startup effectively.
Main Sequence Ventures	Main Sequence Ventures is the manager of the CSIRO Innovation Fund. They invest in startups that have their roots in science, technology and research. They look for startups who can translate this research into global-scale businesses.
Reinventure	Backed by Westpac and sporting a new model of corporate venture capital, Reinventure supports fintech startups and disruptors for the long term. Reinventure looks to 'unlock maximum synergy value between [their] ventures and Westpac'.
NAB Ventures	NAB Ventures is the venture arm of the National Australia Bank. NAB Ventures invests in startups that address NAB's strategic priorities and allow NAB Ventures to leverage the bank's expertise and market position to drive growth.

INSIGHTS:

Rohen Sood
General Manager
at Reinventure

Reinventure is a non-traditional Corporate Venture Capital (CVC) investor. We invest in FinTech, adjacent verticals like data or anywhere financial services plays a key role.

When choosing a CVC investor, entrepreneurs should be aware that not all funds are the same and you should consider three dimensions:

1. how the fund and its incentives are structured
2. whether the fund is an active or passive corporate investor, and which type of investor you would prefer (in our view, active is always better as the investor can provide advice and useful industry connections), and
3. whether the CVC's investment thesis is aligned with the corporate's broader short-term strategic goals or independent of them (both approaches have merits).

The most important of these dimensions is how the fund and its incentives are structured - it is also inextricably linked to the other two dimensions. Hence, it is crucial to understand this and be aware of any misalignment.

The first major misalignment can come from a mismatch of capital time horizons. Most public corporates need to see a return on their capital investments quarterly or yearly due to pressure from shareholders and analysts. This is in contrast to startups that may often take several years to see any returns. This can create friction between a CVC investor and entrepreneurs.

The second major misalignment can be between incentives of CVC fund managers and founders. CVC fund managers traditionally operate as employees of a large corporate and can have incentives that are more short term. This can be at odds with founders who are primarily incentivised for a successful exit of their venture.

One way these misalignments can be mitigated is if the corporate investor invests into a dedicated standalone fund and the fund managers are incentivised to maximise the exit of the fund (and hence, the venture). This is the model of CVC we operate at Reinventure.

HOW MUCH CAPITAL DO YOU NEED TO GET TO YOUR NEXT MILESTONE?

Quick Tip

If you raise too much capital at a low, early stage valuation, you and your co-founders will take excessive dilution, potentially undermining your long-term incentives to grow your startup.

The startup journey is long and arduous. If things go well, you will be in a position to increase your startup's valuation over a number of years. It is likely that you will need to raise more than one round of capital. For these reasons, you should only raise as much capital as you can deploy effectively over a couple of years. Remember, it is easy to spend money but much harder to use it in a rigorous manner.

Quick Tip

A good rule of thumb is to model out what you need to get to your next milestone, for example:

- reaching a certain number of users
- reaching a monthly revenue number, or
- breaking even.

Aim to raise enough capital to help you reach these milestones.

WHAT IS YOUR BARGAINING POSITION?

Raising capital is a negotiation. Firstly, potential investors must be interested enough in the opportunity to consider investing. But once you have crossed this bridge, much of the remaining decision will come down to valuation. As previously mentioned, venture investors are looking for an appropriate risk-adjusted return. It does not make sense for them to invest in early stage startups with over-egged valuations, but often an investor will prioritise 'getting in' on a round if they feel a particular startup has great potential.

Quick Tip

How will I know if I'm in a strong negotiating position?

- multiple investors want in on a round
- your startup is profitable, making closing a round less of an urgent priority
- you have a strong team in place
- your startup is growing rapidly, month on month (i.e. revenue, users etc.)
- you are in a "hot" industry

GOVERNMENT GRANTS AND INVESTMENT

Government departments may also be willing to contribute to your startup. One of the main advantages of these investments is that the department will not usually be looking for anything in return by way of an equity stake.

As an example, Jobs for NSW offers two types of grants for startups. **Minimum Viable Product Grants** are for startups that are not yet generating revenue but are in a stage of gathering feedback from customers and testing business models. **Building Partnership Grants** are for startups that are already generating revenue and are looking to accelerate market adoption.

While the money will not necessarily make or break your startup, it is relatively risk-free. The only cost to you is the cost of filling out an application form and speaking to the relevant person at the government department.

Aside from startup-specific grants, there are also grants aimed at businesses doing particular types of work and at groups of people, including women and indigenous Australians. Finally, governments may also be willing to act as the guarantor for a loan so that you can raise debt finance.

HOW CAPITAL RAISING WORKS IN PRACTICE

Capital raising is different in practice than on paper. Of course, if you are a startup superstar with a huge exit under your belt, raising a first round for your second startup is going to be potentially much easier than the first-time round. Most founders are not in that position. So how does raising a round actually work?

CASE STUDY:

Matt Schiller
CEO of Snappr

Snappr is the Uber of photography, sending pre-vetted professional photographers to you on-demand for any occasion. www.snappr.co

Raising investment may be a 'necessary evil' if you need additional funds to grow your startup. You want your investment round to be short and sweet (someone who spends three months away from their business putting together a round does not make a very good investment). At Snappr, we have raised two rounds in our short six-month existence and closed both within 14 days, meaning we could stay focused on product and growth.

Pitches and pitch decks aside, here are our top six tips:

1. Have one co-founder who dedicates themselves almost full-time to the raise when it is underway. This means the raise is granted undivided attention while also allowing other co-founders to carry on working undistracted.

2. Find investors you connect well with on a personal level. You want people who are on your side for the long term, and who will offer you unwavering support.

3. Road-test your terms, then stick to them. Nothing kills investment traction like a founder who is uncertain about such things like the valuation. Provided you go in with something fair and straightforward, a level of confidence and firmness can actually win you respect from investors. The same applies to your business strategy, expansion plans, and everything else you are pitching - it is better to be confidently wrong than uncertain.

4. Set a close date for your round. While this may mean you risk not hitting your target funding threshold, this is outweighed by the risk of a round that meanders on without closing.

5. Have your term sheet ready to go. The Handshake Deal Protocol is great, but having the paperwork prepared is the best thing you can do for momentum, and gives your investors the impression that you are on top of things.

6. Invest in people and your network long before you need investment. Our rounds happened quickly, but in hindsight, they were built on trusted relationships over many years. If you think you have underinvested in this department, then this Chinese proverb might be good guidance: "The best time to plant a tree was 20 years ago. The second best time is now."

STRUCTURE OF THE ROUND

There are three possible structures for an equity capital raise:

- equity round (either ordinary or preference shares)
- convertible notes
- simple agreement for future equity (SAFE)

Each have their benefits and drawbacks, as explained below.

EQUITY ROUND

An equity round involves founders issuing investors shares in the startup in exchange for cash.

With an equity round, the key areas of negotiation will be:

1. the company's pre-money valuation, and
2. investor protections such as the type of shares they are entitled to receive and their voting rights.

The company's pre-money valuation will determine how many shares the investor will receive in exchange for its cash and what percentage shareholding each shareholder will end up with after the raise.

Certain protections can minimise the risk of investors losing their money, for example:

- issuing investors with preference shares
- the right to appoint a board member, and
- veto rights regarding critical business decisions.

Understandably, investors will want to protect their investment. But it is unwise to give away too much control over your startup, particularly in its early stages. You want to maintain running your day-to-day as you are in the best position to make decisions regarding the direction you want to take your startup.

CONVERTIBLE NOTES

A convertible note is a hybrid of debt and equity. It involves an investor making a loan to the startup which converts to equity on a predetermined trigger event (generally the raising of a priced round or a liquidity event). The conversion rate is usually calculated by reference to the share price of the priced round or the liquidity event.

A loan will have a term (i.e. an expiry date). It is important to determine what will happen if the loan does not automatically convert before the term expires. Will the startup repay the loan? Will it automatically convert to equity? Who decides - the lender or the company? If it is to convert, at what conversion rate?

Interest may accrue on the loan amount, and all accrued interest will convert into equity (along with the loan amount) upon the trigger event. Interest, however, is not a prerequisite.

The loan (and accrued interest if relevant) will usually convert to equity at a discount to reward your investor for backing your startup early on.
While using a convertible note means you can technically delay valuing your business, some notes will have a 'valuation cap' (i.e. a maximum price on the note that will convert into equity). Parties negotiate this valuation cap when raising the round, so you are effectively negotiating a valuation when raising under a note.

Startups typically use convertible notes at the seed round stage, although they can be useful when raising bridging finance between rounds. A convertible note should specify:

- how much is being invested
- what interest is payable
- when the loan will convert
- what discount rate will apply, and
- the valuation cap.

Importantly, as debt is regulated, you should ensure you comply with any applicable regulations when dealing with convertible notes.

SAFE

The Simple Agreement for Future Equity (also known as the SAFE) is a relatively new way of raising capital. Y Combinator, a leading US seed accelerator, introduced SAFEs in the United States, and it has been adopted in other countries with a strong startup culture. Since we published the first version of the Startup Manual, SAFEs are becoming increasingly popular and appear to be overtaking convertible notes as the preferred early stage investment mechanism in Australia. They are being used by certain accelerators, angel investors and even VCs - which is great news for founders.

The SAFE is similar to a convertible note minus the debt element. In consideration for paying a cash amount to your startup, an investor receives a contractual right to receive equity in your startup when a predetermined trigger event occurs. The trigger events are generally the same as those found in a convertible note (i.e. a priced round and a liquidation event).

The number of shares the investor receives on conversion is linked to the upfront cash injection they make and the share price of the priced round or the liquidation event (as applicable). As with convertible notes, startups may issue equity at a discount, and there may be a valuation cap. As the SAFE is not debt, if the startup enters insolvency before the cash converts, then the startup agrees to pay the investor an amount equal to its cash injection before making any payments to its shareholders.

The advantages of raising capital using SAFEs, as opposed to convertible notes, are as follows:

1. SAFEs do not have a term (which means that if a trigger event never occurs, then the investor will never receive shares)
2. interest is not payable on SAFEs and so the complexities involved in converting interest into equity does not apply
3. SAFEs are not debt and therefore are not regulated

EQUITY CROWDFUNDING

In a bid to give Australian startups more opportunity to access capital for their businesses, the Australian government introduced an equity crowdfunding regime in 2017, later expanded in 2018 to make it accessible for eligible private companies. Before its introduction, capital raising disclosure requirements in Australia meant that a private company could not raise more than $2 million from more than 20 retail investors in a 12 month period. Private companies were also restricted from having more than 50 shareholders. This prohibited startups from raising funds from the ‘crowd’ in return for shares.

Under the new regime, eligible private companies are exempt from these rules and able to raise up to $5 million in a 12-month period from hundreds of investors. The investment must be made through a licenced intermediary who will list the investment opportunity on their online platform and facilitate the investment.

The equity crowdfunding regime is heavily regulated and startups looking to raise funds in this way will need to invest time (and money) into ensuring they meet the requirements. For example, startups must prepare a compliant crowd-sourced funding offer document and are subject to additional financial reporting and corporate governance requirements. In addition, the company must have a minimum of two directors, be based in Australia and fall under the $25 million assets and revenue caps. However, the growing number of intermediaries (including Birchal, Equitise, OnMarket and Billfolda) and increasing frequency of equity crowdfunding raises by Australian startups is a promising sign that the regime is helping to democratise startup funding and investing.

CASE STUDY:

Samantha Wong
Partner at Blackbird

Preference Share Round using AVCAL Docs - Blackbird and Baraja

Blackbird Ventures mainly invests in Seed or Series A rounds. We invest in founders who have the ambition to build a global business from day one. As Head of Operations, I spend considerable time working through the deal structure with our investee companies. Below, I've discussed the process which led to us investing in Baraja Pty Ltd, a startup developing 3D LIDAR technology. I'll also explain the main terms we usually invest under.

Blackbird Ventures had been involved in the autonomous driving space for several years and knew the cost and reliability of existing LIDAR technology was a key problem these companies faced.

Once we had decided we wanted to invest in Baraja, the next step was to provide its founders, Federico and Cibby, with a draft term sheet (usually a one pager). The main terms we include in our standard term sheets include:

Term	Explanation
Round terms	How much we will invest, and what the minimum and maximum round size can be. Maximum round sizes are important to VCs because we invest at the early stage, we want to ensure that neither Blackbird nor the founders are too diluted. Conversely, the minimum round size is important to ensure that you raise enough money to achieve the business milestones.
Pre-money valuation	The valuation at which we will invest in the company.
Board	Whether Blackbird will get a seat on the board or not.
Voting rights	The key business decisions which we want to have a say in, such as materially changing the nature of the business and selling a majority of the assets of the company.
Employee Share Option Plan (ESOP)	How much of an ownership stake in the company will be set aside for future employees? At Blackbird, we encourage founders to set aside 15-20%. Attracting good employees can be difficult for startups. The ability to offer sizeable amounts of equity can make a difference.
Founder vesting	The terms on which the founders' shares vest, we usually insist on four-year vesting with a one-year cliff.
Liquidation preferences	When we invest, we do so through preference shares with a 1X non-participating liquidation preference. This means we get our cash back before ordinary shareholders in the event of an exit or insolvency. However, 'non-participating' means we do not also get to receive cash according to our pro rata in the company. We have to choose either to just get our cash back or convert our preference shares to ordinary shares and participate in splitting the exit proceeds pro rata with other shareholders.
Preferential dividend rights	We often ask for non-cumulative preferential dividend rights, which means that if a dividend is declared, then we are paid before ordinary shareholders.
Anti-dilution rights	As with other early stage VCs, we generally require standard, broad-based weighted average anti-dilution rights. This means that if the startup issues shares at a lower share price than the share price the VC pays in the future, the VC will receive additional shares reflecting an adjusted share price (of all their preference shares). The adjusted share price will be calculated by the average of the price they paid and the lower price paid by the later investors.
Pro rata, Right of First Refusal & Co sale rights	Rights to invest pro rata in future capital raisings, and to have a first right to buy any shares from other selling shareholders in the future. For VCs, this is probably the second most important term.

Once we agreed on the terms with Baraja, we signed the term sheet. Baraja also had their lawyers review the term sheet before signing, and then finally celebrating with a glass of champagne!

Blackbird has now invested in multiple funding rounds with Baraja and, despite the increasing valuation and size of the round, the smooth process has remained the same.

ALTERNATIVES TO EQUITY: VENTURE DEBT

Raising an equity round is not the only solution to funding a startup. Back in 2014, when we raised LegalVision's first round of external finance, we did not raise an equity round, but rather a venture debt round, using a structure known as a revenue loan. Since we raised our first round three years ago, venture debt has become increasingly popular, as Partners for Growth's Australian launch in 2016 demonstrates.

CASE STUDY:

Karthi Sepulohniam
Managing Director at
Partners for Growth Australia

Partners for Growth (PFG) provides custom debt solutions to private and public technology and life science companies as well as non-tech companies. We focus on revenue-stage companies – above $5 million in sales – and with a growth story. We seek to fund good companies who generally cannot get finance from traditional lenders.

In January 2016, PFG provided a venture debt facility to fintech innovator Nimble Australia. Nimble provides small loans via their purpose-built tech platform. They promise paperless applications where customers are approved and paid quickly. Nimble required $20 million to fund their loan book and for general working capital.

Nimble was still early in its growth cycle, so bank debt was not a viable option. Banks prefer funding profitable, asset-rich businesses. Most young tech companies are not profitable and have few assets. Further, banks often require personal guarantees to support even a small facility. By contrast, PFG was willing to take a general security over the business' assets without any personal or director guarantees.

Equity can be great to fund early commercialisation of a tech startup. But as your company progresses, a combination of debt and equity can work in concert to provide an optimum mix of capital from a cost and flexibility perspective. It did not make sense for Nimble to use equity to fund its loan book. This would have diluted their shareholding, which wasn't necessary for circumstances where they had a proven offering, customers and growing revenue.

PFG structured the Nimble facility as a three-year loan with a two-year extension. Nimble pays interest on the loan commensurate with a venture debt facility (10%-13% per year). The deal includes customary financial reporting (no more than what the company provides to its board) and terms and conditions that are typical for secured lenders.

By accessing debt finance at an early stage, Nimble could raise funds without diluting the equity pool and without the need to give personal guarantees. Further, while PFG does not take board seats, we were able to introduce Nimble to a number of senior C-level financial executives to the company's management team for advice and mentorship.

WHEN MIGHT YOU CONSIDER VENTURE DEBT?

INSIGHTS:

WHEN IS IT APPROPRIATE TO USE VENTURE DEBT?

James McGrath
Investment Manager
at OneVentures

Venture debt is a beneficial alternative or complement to equity financing, as it involves less equity dilution, less loss of control, and less time spent capital raising.

There are three scenarios when venture debt may be appropriate:

1. At the same time as an equity round

If you are already conducting a round, you can supplement the equity with venture debt. This is the best time to raise venture debt as the company's materials and management are available and the lender has the positive signal of investors putting money in. All this allows the borrower to negotiate the best terms.

This is most suitable for companies that are:

- making over $3M in revenue;
- burning significant cash; and
- want more capital without excessive dilution (for example, you could raise a $5M round composed of $3M of equity and $2M of venture debt.)

2. Between rounds

If you need capital but believe you are approaching a major value inflection point (i.e. a key turning point in your business) and are reluctant to do another capital raising round, venture debt can give you the additional runway you need to achieve more favourable terms. It has the added benefit of not needing to be paid back at the next round. This type of loan is suitable for companies with up to $5M in revenue, a medium amount of burn and strong existing investors.

3. During later rounds to replace equity

If you are a later stage company with $5-10M of revenue and a low burn (less than 10% of revenue), venture debt can entirely replace equity financing.

It also offers significantly less dilution for founders. For example, following its Series C fundraising round, Dropbox transitioned to venture debt and the final two rounds of capital raising had no equity. This formed two thirds of Dropbox's total US$1.7B capital raised. At IPO, Dropbox's founders owned 36% whereas Box's founders, which did not use venture debt, held less than 6%.

If you are looking to learn more about venture debt, download **LegalVision's Venture Debt Handbook** on our website.

LATER STAGE FUNDING

Whilst it is true that with every round you raise, it gets a little easier, equity rounds for later stage startups, such as a Series B or C, come with their own unique complexities:

- A large portion of the funding is likely to come from your existing investors, but you may also be bringing onboard someone new. A lot of thinking goes into which investor will lead the round, with your existing investors often choosing to take a back seat and let someone else dictate the price of the round and its terms.
- Key rights that your investors negotiated for themselves in previous rounds may need to be renegotiated, as the structure of the cap table changes and bigger players require their own protections. For example, the appointment of an additional investor director can skew the founder's control of the Board, so the decision making process may need to be reconsidered.
- You may also need to introduce a high-ranking class of preference shares which would require your existing investors' approval. This can often mean complex negotiations with multiple parties.
- Later stage raises are also a lot larger, so whilst you may be able to use the investment documents from your previous round as a base, it is likely additional investor protections (such a more comprehensive company warranties) will be required.

SECONDARY SALES

Some later stage raises may also contain a secondary sale. Secondary sales are where the early shareholders of the company, usually the founders, sell a portion of their shares directly to the investors as part of the round. Whilst the majority of the investors' funds go to the company through the purchase of newly issued shares, a portion will go to the selling shareholders in return for their shares.

Where a startup is doing really well but a liquidation event is not yet on the horizon, the founders may want to sell some of their shares to take some of their risk off the table and reap some reward for the business' growth to date. VCs are becoming more accepting of such secondary sales;. they appreciate the founders' considerable investment into the business and the small salary that they likely took while it grew.

But they will want the secondary sale to strike a balance between being a rewarding pay-out for founders and still ensuring their equity stake is ample enough for them to stay motivated to continue the business' success.

If your later stage round involves a secondary sale, some important things to consider are:

- the class of shares being sold vs the class of shares being issued as part of the round (i.e. if the investors are being issued preference shares, but the founders are selling ordinary shares, should these shares be converted into preference shares or should the price be adjusted?).
- whether your existing shareholders have pre-emptive rights (a right of first refusal) on the sale of shares that will need to be complied with or waived by the shareholders.
- are the founders subject to restrictions on selling their shares (such as vesting, or co-sale rights for investors)?
- will the sale trigger tag along rights (i.e if a significant proportion of the shares are being sold, do the other shareholders have a right to tag along with the sale)?
- What are the tax consequences of the sale?

LEGAL DOCUMENTS

What is the point in funding your business if you stand to lose it all in an avoidable dispute in the future? Having the right legal documents in place from the outset will protect your startup from launch, through growth and all the way to acquisition.

It is now easy to download free legal documents. However, you should fully protect your startup by speaking with a startup lawyer to draft tailored legal documents.

TERM SHEET

There are circumstances where a startup will provide a term sheet to investors (generally an early stage friends and family or seed round). But when an investor decides to invest in your startup, they will generally provide you with a term sheet. The basic terms you should look out for are below.

Investment & Valuation - How much is the investor investing (maximum and minimum)? Can you raise more from other investors? What will be the pre-money valuation for the round?

Vesting - Will the founders' shares vest? Standard procedure on a Series A round is four-year vesting with a one-year cliff. What this means is if a founder leaves the startup before the first year, none of his or her shares will have vested. 25% of the founder's shares will then vest at the one year anniversary, and the remaining 75% will vest over the next three years, generally on a monthly schedule. You may want to negotiate a good leaver provision. So, if you stop working for the company within 12 months and you are a good leaver (i.e. left the company due to events outside of your control, such as death or health reasons), then 25% of your shares will automatically vest. Try to ensure that accelerated vesting occurs on an exit event, so that you do not lose all your shares if there is an exit event.

Board/ Control - Will the investor/s have a board seat? What control will the investor/s have over decision making?

ESOP - Will you be setting up an employee share option plan? How will the ESOP affect the pre-money valuation (i.e. is the valuation the VC is offering inclusive or exclusive of the ESOP?).

ESOPs and Valuations

Founders often get confused when discussing valuation and ESOPs. When a VC says they will invest at $10 million pre-money, they usually mean $10 million inclusive of any ESOP the startup will be setting aside for future employees. If you are setting aside 20% of your stock for future issuance under an ESOP, this means the real pre-money valuation your VC is offering you is $8 million, not $10 million. As long as you know what you are getting into this is fine. If you are looking for a $10 million valuation not inclusive of the ESOP, you will need to negotiate a higher pre-money valuation. In this case, $12.5 million.

Liquidation Preferences - If you are issuing preference shares, what level of liquidation preference will you be offering (1X non-participating is standard - any more is greedy!)

Anti-Dilution - What anti-dilution rights will you offer investors (if any)? If possible, you want to avoid offering anti-dilution rights to investors so that all shareholders are diluted (pro rata) when the company issues additional shares. Early stage VC investors will generally require broad-based weighted average anti-dilution rights. This means that if the startup issues shares at a lower share price than the share price the VC pays in the future, the VC will receive additional shares reflecting an adjusted share price (of all their preference shares). The adjusted share price will be calculated by the average of the price they paid and the lower price paid by the later investors. If you are bringing on investors who insist on anti-dilution rights, it is essential to engage a lawyer who understands how they work and the different types of anti-dilution rights available.

Dividends - If you are issuing preference shares, it is unlikely you will be offering preferential dividend rights. However, if you have to, you want to offer non-cumulative rather than cumulative preferential dividend rights. Non-cumulative means that if the company does not pay a dividend in a particular year, then the investor loses its right to receive a dividend. On the other hand, cumulative means that even if the company does not pay a dividend that year, the investor carries over its right to receive a dividend. The company must then pay the investor all dividends before paying any ordinary shareholders.

Legal Documents - A term sheet will typically set out the basic legal documents to be used in the deal (in Australia more and more Seed/ Series A rounds are being completed using the AIC documents).

What are AIC Documents?

Australian Investment Council (AIC) is an association of sophisticated investors (principally private equity and venture capital investors). Under their previous name, AVCAL, they created a suite of documents named "Open Source Seed Financing Documents" with the input of a number of key industry stakeholders, including LegalVision. The documents are free and available for public use.

SHAREHOLDERS AGREEMENT

Your shareholders agreement is your startup's most important document as it sets out the relationship between shareholders and directors. It will cover matters such as:

- issuing new shares
- sale of existing shares
- directors duties
- conduct of board and shareholder meetings, and
- dispute resolution.

You can have your shareholders agreement drafted before looking for external investment or when raising a round, based on your term sheet.

SUBSCRIPTION AGREEMENT

A subscription agreement formalises the terms of the investment with a specific investor. It is typically based on the final term sheet and specifies:

- how many shares the startup is issuing
- the subscription price for those shares
- when the startup will issue the shares, and
- company (and sometimes founder) warranties.

Company warranties are statements which an investor can rely on saying everything has been done above board.

IP ASSIGNMENT AGREEMENT

Your IP is critical to your startup's value. Startup founders may have owned their IP personally in the early stages. It is important to ensure you have assigned your IP to the same company your investor is investing in. To do so, you will need an IP assignment agreement to transfer the ownership of the IP to the company. You may also need an IP assignment agreement if you use external developers without a development agreement, or incorporate a holding company to hold the assets of your operating company.

EMPLOYMENT CONTRACTS

Some startups will raise a round without the founders having signed employment contracts, but this is rare. Investors want to make sure the startup has employed its founders.

CAP TABLE

Your capitalisation table, or cap table, is a spreadsheet that sets out who owns shares in your startup. The formulas needed to work out shareholdings are not that complicated, but it is remarkably common to mess up cap tables!

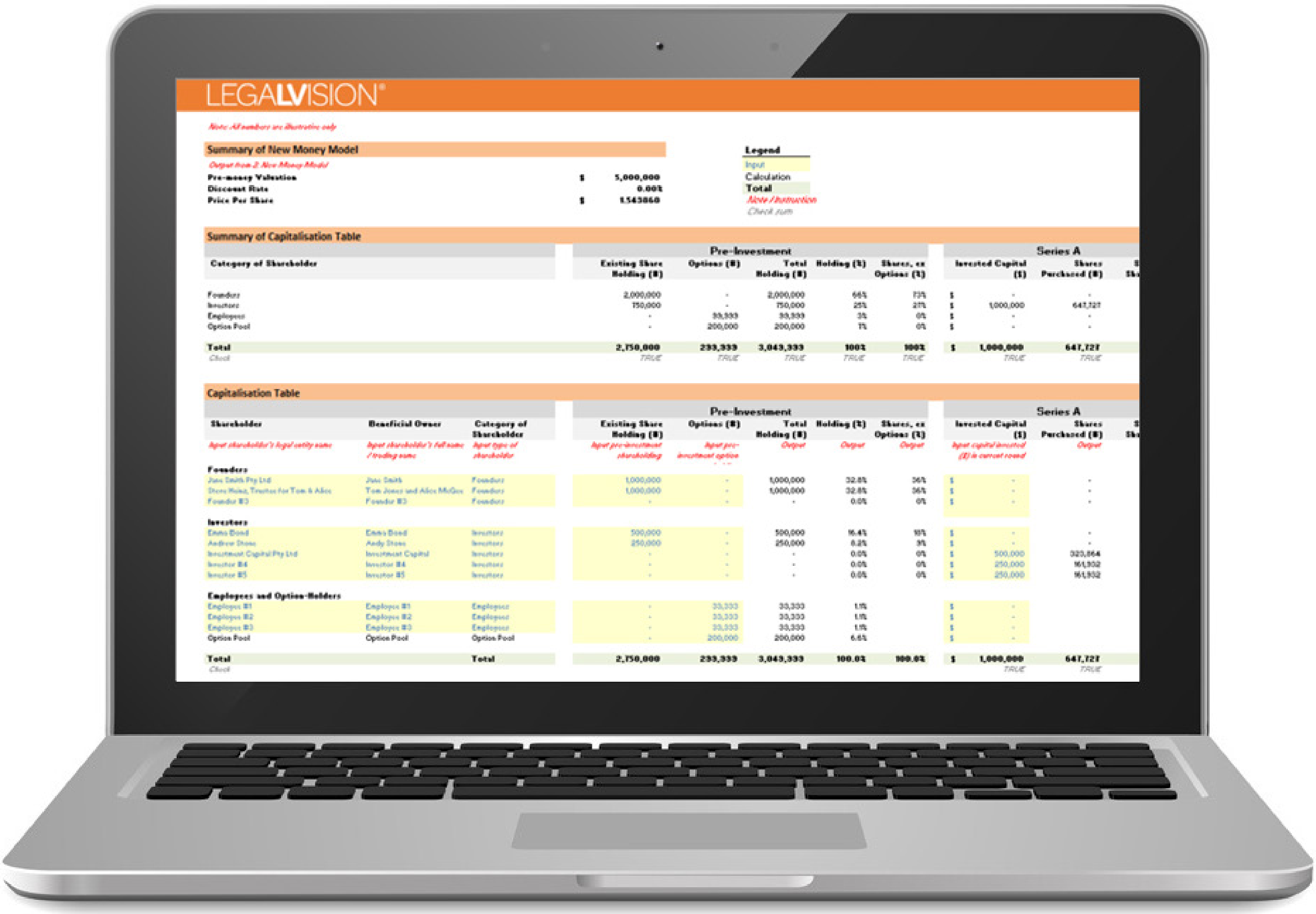
Cap table management comes down to accurately recording all transactions that affect the valuation of a company such as option issuances, sales transfers, conversions of debt to equity and any exercises of options. We have built a cap table spreadsheet for founders to record options.

This cap table template allows you to easily take control and manage your startup's equity. You can also analyse and compare new financing rounds to make the best decisions around raising capital.

With this free template, you can:

- Easily view and manage your startup's shareholding and options
- Eliminate time-consuming calculations so you can focus on making smarter equity decisions
- Track all types of equity events
- Calculate pre-money and post-money valuations

You can download LegalVision's cap table at **http://bit.ly/lvcaptable**



BUILDING A TEAM

Startups are about teams. Although your team may begin with one or two founders, you will soon bring on board employees. Many successful startups scale quickly, so you need to plan for how you will help motivate your team members and ensure they stay with your company.

There are two legal matters concerning employees that almost every startup will need to think about, both covered in this section:

- employment contracts
- employee share schemes

EMPLOYEE OR CONTRACTOR

When hiring new team members, the first thing you need to consider is whether they are an employee or contractor. Taxation, superannuation and employment law obligations differ for each and this issue can get early stage startup founders into trouble. Some factors that determine whether a worker is a contractor or employee are set out below.

Importantly, you cannot call a worker a contractor while treating them as an employee (also known as 'sham contracting'). The ATO frowns upon businesses that mischaracterise workers to avoid their employment law obligations. If you are unsure, use the employee/contractor decision tool on the ATO's website to determine whether your team member is an employee or a contractor.

Control: Does the hirer have the right to exercise detailed control over the way work is performed or does the worker have full autonomy?

Separate place of work and advertises services: Is the worker required to wear a uniform or display material that associates them with the hirer's business?

Provision and maintenance of significant tools and equipment: Is the worker required to supply and maintain any tools or equipment (especially if expensive)?

Right to delegate or subcontract work: Is the worker free to work for others at the same time? Can the worker subcontract the work or delegate work to others?

Income taxation deductions: Is taxation deducted by the hirer from the worker's pay?

Remuneration: Is the worker paid according to task completion, rather than receiving wages based on time worked?

INTERN OR EMPLOYEE

Startups may also host interns looking to obtain work experience. An internship can be a worthwhile learning experience, offering the intern access to mentors and skill development. However, it is important founders remember that an intern does not replace an employee.

Internship Purpose

Before engaging an intern, ask yourself what is the purpose of the arrangement? Is it to provide a benefit to the individual or the business? If it is the latter, it is likely to resemble an employment arrangement. Remember that the primary benefit derived from the internship should flow to the individual. It is a genuine opportunity for him or her to observe and learn. Startups should consider bringing on interns that are required to undertake an internship as part of a vocational placement for TAFE or university. In this way, the intern can provide a greater contribution to the business rather than just observe (for example, during work experience).

Internship Pay

If you bring on an intern, ensure that your internship agreement clearly states that the role is unpaid and for a finite agreed duration. You may choose to offer a stipend to cover lunch and travel expenses. However, payments comparable to wages can point to an employment relationship, for example:

- Regular payment calculated with reference to time or hours worked
- Large lump sum payments, or
- Allowances that far exceed the expenses incurred.

Internship Duration

We commonly speak to startups that misunderstand an internship's primary function is for the intern to derive benefit through observing and learning from others in the business rather than directly contributing to its productivity. Parties should agree on the internship's length at the outset (4-12 weeks for example) rather than an indefinite placement.

Consequences for Mischaracterising a Relationship

If a startup founder is found to have engaged interns, but the relationship is in fact employee-employer, they will be liable for back pay and other employee entitlements. The business could also face fines of up to $51,000-$54,000 for each breach of the Fair Work Act. Directors/managers of the business are also exposed to individual fines for breaches of the Fair Work Act.

EMPLOYMENT CONTRACTS

Employees all need employment contracts. It is remarkable how many founders do not bother with ensuring their employees have an agreement in the early days. Your employment contracts should address a number of standard issues (intellectual property, restraint of trade, leave requirements, etc.). In the startup space, it is especially important to include an extended probation period (ideally six months). Startup life is not for everyone and a lengthy trial period helps both the startup and team member work out if there is a good fit.

> If you decided to host any interns, ensure that you have an internship agreement template in place so when he or she starts, you can fill out their role, learning aims and both parties' obligations together. Avoid the trap of falling into an informal intern arrangement.

EMPLOYEE SHARE SCHEMES

Obviously, you want the best person for the job, in the job. But as a startup (unless you have raised plenty of capital), it is unlikely that can pay top dollar for team members. Enter an Employee Share Scheme (ESS). Under an ESS, you can offer team members shares or options to buy shares in the company. Nearly every high-growth startup will have an ESS. Offering team members shares or options in the startup can help bridge the gap between their startup salary and an equivalent corporate salary. An ESS is also a great way to ensure your employees feel like they have a real ownership stake in the business and that their interests align with your startup. The startup's success will be their success.

In July 2015, the ATO made changes to how they taxed ESS in startups. If your startup meets certain eligibility criteria, you can issue shares, or options to purchase shares, to an employee who is taxed only when they make a financial gain (usually when they sell their shares). In other words, the ATO will not tax your employee when your startup issues him or her shares or options, when their shares or options vest, or when they exercise their options (if applicable). It does not make sense for employees to pay tax on something that may ultimately prove worthless if the startup goes under.

Once the employee sells his or her shares (generally on an exit event), the gain made will be taxed as a capital gain. If the employee has held the shares or options for longer than one year, he or she will receive a 50% reduction in the capital gains tax he or she must pay.

As previously mentioned, a startup must meet certain eligibility criteria for the tax concessions to apply.

The ATO has issued two safe harbour valuation methodologies which startups can use to value their shares for an ESS. One is essentially a formal valuation, and the other is a net tangible assets test. To use the net tangible assets test, a startup must satisfy certain eligibility criteria. If it meets the criteria, then the startup's valuation can be calculated using the following formula.

$$(A - B) / C = \text{Valuation}$$

Where:
A means the company's net tangible assets at that time (disregard any preference shares on issue);
B means the return on any preference shares on issue at that time if the shares were redeemed, cancelled or bought back;
and C means the total number of outstanding shares (e.g. ordinary shares) in the company.

Startups tend to have few, if any, tangible assets. So, the net tangible assets test enables startups to issue shares or grant options with a share or exercise price that is lower than the share's market value.

ELIGIBILITY CRITERIA FOR TAX CONCESSIONS

Shares cannot be listed	Company's shares (and the shares of any holding, subsidiary or sister company) are not listed on an approved stock exchange
Company Incorporation	The company (and any affiliated or connected company) was incorporated less than 10 years before the end of the most recent income year before the employee acquires the share or option
Aggregated Turnover	The company (together with any connected or affiliated entities) has aggregated turnover of no more than $50m in the most recent income year before the employee acquired share or option was acquired
Residency	The employer company must be an Australian resident
Company's Predominant Business	The predominant business of the company is not the acquisition, sale or holding of shares, securities or other investments
Employee's Status	When the employee acquired the shares or options, they are employed by the company or a subsidiary of the company
Operation of the ESS	ESS participants cannot dispose of their options/shares earlier than three years from the grant date of when the employee ceases employment
Type of Shares	The shares or options granted to an employee under an ESOP must be ordinary shares
Percentage of Shares Held	An employee cannot hold a beneficial interest in more than 10% of the shares in the company and cannot control the casting of more than 10% of the maximum number of votes at a general meeting
Discounted Shares	When issuing shares, any discount to the share price must be no more than 15% of fair market value
Exercise Price	When issuing options, the exercise price must be at least fair market value of a share at the date of grant of the options

CASE STUDY:

Cliff Obrecht
Co-founder and COO of Canva

Canva's recruitment philosophy starts with one fundamental principle - hire the smartest people we can and give them the freedom to manage themselves and determine how they want to work.

Our equity scheme is a big part of that philosophy. As Canva continues to grow, we have found that giving our team an equity stake in the business has been a powerful way of increasing engagement. Equity makes people feel invested in a business, and that level of investment is crucial in motivating people to do their job to the best of their ability.

If you are thinking about using equity as part of your remuneration framework, you need to be fully aware of your obligations under the Corporations Act. ASIC grants some relief to startups - these include senior manager exemptions and the 20/$2 million rule that allow issuances of up to $2M of equity across 20 employees in a 12-month period - but soon enough you will find yourself needing to lodge a public disclosure document. That is something you should plan for well in advance.

The purpose of a disclosure document is to protect employees (or retail investors) and aid them in making informed investment decisions. There are four disclosure document types, but if you are issuing less than $10 million of equity, then you will probably be lodging an Offer Information Statement (OIS). The OIS must explain the intricacies of the corporate/equity structure and business risks and must attach audited financial statements for a 12-month period including comparatives. Unfortunately, it is probably fair to say that these obligations have not really kept up with the realities of the startup movement, which relies heavily on share option plans to attract and retain talent.

Remember, you only have six months from the end of your financial year to lodge the OIS. This is not a long time, particularly if you need to bring the business' historical financial information in line with prescribed Accounting Standards. It always pays to be prepared, and it is important that you have a strong finance team with financial reporting experience that are aware of any complex accounting challenges. You should also seek guidance from trusted legal advisors to navigate the Corporations Act requirements.

DEALING WITH CUSTOMERS AND SUPPLIERS

Your relationships with external stakeholders such as customers and suppliers will continue to become more important in driving your startup's success as you grow. From resolving customer complaints swiftly to identifying trusted suppliers, a big key to your startup's success will be how you deal with people.

Commercial considerations will largely drive how you source suppliers so it is important you are familiar with what you want from the relationship, for example:

- How will you ensure consistent product quality?
- Who is responsible if product quality is below standard?
- Does the supplier require a minimum order?
- Will you pay upon receiving the goods?
- What happens if the supplier sells out or discontinues particular stock?
- How can you compare suppliers?

Your legal documents, namely your supplier or distributor agreement, should address issues around quality, payment and subcontracting. Addressing early on how you will deal with suppliers will ensure you protect your business and comply with any relevant laws.

DISPUTES WITH CUSTOMERS AND SUPPLIERS

Unfortunately, even if your startup has a great product which customers love, there may come a time when you find yourself in a dispute with someone that you are working with or someone that you are working for. These types of disputes are tricky for a number of reasons:

- You can lose a customer and all of the revenue that the relationship might have generated going forward
- There are reputational risks, which are a particular issue if your startup has a social media presence
- If the dispute is with a supplier, you may need to find a new organisation to work with, which can have significant cost implications
- If the dispute is very serious, you could get sued or find yourself needing to sue someone, and
- A dispute will take time away from the most important thing for any founder - running your business.

Disputes commonly arise because of a difference in expectations between you and your customers. A customer may be upset because what they thought your business would provide, the quality of the product or the delivery speed differed to their expectations. In this context, disputes will unlikely begin with a letter threatening legal proceedings. It is much more likely that you will get a call or an email from the person who is unhappy asking for you to fix whatever the problem is or to refund their money.

The reasons that a dispute with a customer may arise will depend on what your business does. If you have a SaaS business, disputes may arise where the service you are providing is not available to customers when they want it, is operating too slowly or has glitches. If you provide a print on demand business, it may be because the quality of the physical products that you produced aren't up to scratch.

Quick Tip

Ensure your business terms and conditions include suitable limitations of liability and warranties as to the level of service or quality of product you provide to limit your risk.

Doing this can provide you with some measure of protection if a customer tries to sue you for damages they claim to have suffered as a result of a failure in the product/service you have provided.

DISPUTE RESOLUTION THROUGH A CUSTOMER CENTRIC APPROACH

If you want your startup to succeed long-term, the majority of disputes will require a customer-centric approach. Offering discounts, free services and other commercial resolutions will go a long way so it is sensible to think about your approach to retain dissatisfied customers. For example, Uber employs teams of 'customer happiness officers' who will not hesitate to refund a user for anything less than stellar service.

If the worst-case scenario does happen, and you find yourself in a situation where a customer is threatening to commence proceedings against you, you have two options:

- settle on commercial terms (ideally recorded in a formal deed of settlement), or
- go to court.

Court proceedings are very expensive, can take years to finalise, and can be disastrous from a PR perspective. If you are considering going down this route, make sure you are doing so for the right reasons and that you have spoken with a lawyer about your prospects for success.

A CUSTOMER CENTRIC APPROACH TO DISPUTE RESOLUTION

- Offer a discount
- Refund the service or good
- Offer a free upgrade
- Train staff on dispute resolution processes
- Open up communication channels
- Give personalised attention
- Resolve quickly

LEGAL DOCUMENTS

Website Terms of Use

Most startups will have a website. Website terms of use are the terms which govern how visitors can and cannot use your website. They help protect your intellectual property and limit your liability in relation to matters such as third party links, service outages, prohibited or unintended use and loss as a result of reliance on information (but only to the extent allowed under the Australian Consumer Law). Website terms of use can be drafted cost effectively, so do not spend lots on getting them drafted.

Privacy Policy

If your website collects personal information, you will be likely be required to have a privacy policy. There are various rules around what size business you need to be before you are required to provide a privacy policy to visitors and users, but it is easier just to put one together from the start - they are rarely complicated and should not be costly. Your privacy policy states how your business will deal with the personal information it collects.

Business Terms and Conditions

Your business terms and conditions will differ depending on the type of business you run. If your startup is an e-commerce business, you will need a set of sale terms and conditions for your customers. This would generally be provided online through a clickwrap agreement (i.e. the customer must click-to-agree to before proceeding to purchase).

If you provide services, you will need a client agreement or service terms which set out what you will and will not do for the customer as part of any particular engagement.

If your business is a marketplace, you will need a set of marketplace terms and conditions which set out your relationship with your suppliers and customers, as well as any relationship between the two. If you are running a SaaS business, you will need SaaS terms.

Ultimately, your business terms and conditions will be one of your most important contracts. We often find that the process of drafting your terms can help a founder identify exactly how their business will operate.

Types of Business Terms and Conditions

Business Type	Legal Document
Service business	Client Agreement
Shop/E-Commerce Store	Sales Terms and Conditions
Marketplace	Marketplace Terms and Conditions
SaaS Business	SaaS Terms and Conditions

CASE STUDY:

Kate Pullinger
Chief of Staff at SafetyCulture

SafetyCulture is a global SaaS business that develops software applications for improving workplace safety and quality. SafetyCulture is the maker of iAuditor, the world's most used inspection app.

We interact with businesses of different sizes and levels of commercial sophistication. We are rolling out standard agreements such as nondisclosure agreements, customer terms and conditions and partnership agreements on a daily basis. Due to the nature of SaaS, the volume of contracts with customers and partners is high. It is therefore really important for us that these documents are as robust as possible at the outset but sufficiently balanced for our customer base.

Requests for changes to the kinds of standard documents that we use on a day to day basis are fairly common, but we need to push back where we can. Changes in these documents, especially customer terms and conditions, can quickly become burdensome, risky and expensive. This is a particular problem for startups with a low average revenue per user, as the cost of making changes to the documentation can quickly erode any margin. Even for the largest companies, we try to initially push back on significant changes unless the potential for a longer-term relationship matches the risk.

Having our contractual terms standardised simplifies the processes we need to put in place for accounting, renewals, etc. as these key terms will be the same for each customer. As soon as changes are made to these terms, you need to have systems in place so that your team can easily identify which customers get a particular set of conditions that are different. This adds to time spent on contract administration, which adds to costs.

PROTECTING INTELLECTUAL PROPERTY

TRADE MARKS AND DOMAIN NAMES

When you first launch, it is tempting to try and save as much cash as possible. Applying for a trade mark is not necessarily a priority. However, if your startup gains traction, your brand will become valuable, and you will want to protect your IP. We generally recommend that founders apply for trade mark protection early in the growth phase.

Once you have momentum, it is equally important that you purchase all relevant domain names. This is typically inexpensive ($10 per year for a .com domain name) and could save you a great deal of cash down the track.

CASE STUDY:

Evan Tait-Styles
CTO at LegalVision

As a startup founder, you are juggling building your MVP, preparing for launch, acquiring users, responding to their feedback, iterating your product and effectively using your limited time and capital. It is overwhelming. So, when we started LegalVision, we were not thinking about long-term plans. We registered legalvision.com.au but did not bother with any international domain names including legalvision.com.

Fast-forward two years. We were growing quickly and had pivoted. Our minds turned to expanding internationally, and we were thinking about registering the legalvision.com and .co.uk domain names. Unfortunately, domain name squatters were also watching our traction with interest and had already purchased these names. The squatters demanded USD $50,000 for the .com domain name.

Startup founders should think global from day one. If you have the foresight to register your domain name internationally, you can protect your brand from cyber squatters, competitors who try to replicate your success using your business name abroad, and individuals who seek to redirect your customers and discredit your reputation. If you intend to sell your business in the future, your domain name is a valuable asset. Although you may think you are saving money, you could end up spending significantly more long term.

When it comes to protecting your brand, you cannot register generic words that are commonly used to describe a type of business such as "online grocery store". You are also prohibited from registering geographical names, the names of international organisations and offensive marks. Once you have picked a name that you like, and that is not in use or registered by someone else, apply for the trade mark and register all of the relevant domain names at the same time.

Quick Tip

A good way to go about selecting a name/domain name is to decide on a few names for your startup, then do a domain name and trade mark check.

SHOULD YOU REGISTER YOUR LOGO AS A TRADE MARK?

A trade mark is a sign used to distinguish one person's goods or services from those of others. A trade mark exists whether it is registered or not, but registration provides you with rights that you would not otherwise have.

Quick Tip

Each 'sign' is considered a separate trade mark, and you must register each separately with IP Australia (for example a business name and logo are two different marks). This means you will submit two applications and pay two sets of fees.

When you register a word trade mark (for example, your business name), you are protecting the word or phrase. If you choose to register your logo, you are protecting the image and its overall impression, taking into account the shape, orientation and configuration. If your logo is just a stylistic representation of your name, then you may be sufficiently protected by registering the name or phrase only as a trade mark. However, if your logo has a distinctive appearance or is key to your branding, you should also consider registering the image to ensure maximum protection of your IP.

PATENTS

If you have invented something new - a device, substance, method or code - you might want to consider applying for patent protection. A patent is a legally enforceable, exclusive right to exploit an invention. As an exclusive right, a patent allows you to prevent others from making, using, selling, or otherwise dealing with the invention.

Filing a patent application is a complex process.
To receive patent protection, your invention must be:

- new (not publicly disclosed)
- involve an inventive or innovative step (not obvious), and
- capable of commercial application (useful).

The invention must also be a 'manner of manufacture', which means that it must be or produce something in a tangible form. Ideas and discoveries, for instance, are not patentable, nor are mental processes or ideas. This 'manner of manufacture' requirement is a common barrier to many computer related inventions.

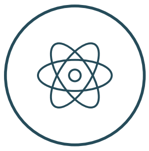
The basis for the patent system is that it encourages people to invent new and useful things. In exchange for temporary monopoly rights, an inventor must explain to the world exactly how to make the invention. So, when applying for patent protection, you must provide a clear written description that would enable another person to make your invention.

The two types of Australian patents are:

- **Standard Patent**: A standard patent offers protection for up to 20 years, and there is no limit on the number of claims you can make. The patent office will then examine your patent application to determine whether it meets the requirements for patentability (in Australia, a patent examiner from IP Australia). This process can take several months or years.
- **Innovation Patent**: An innovation patent has a lower threshold of patentability, requiring an 'innovative' rather than 'inventive' step, but only provides up to eight years of protection and has a limit of five claims. Consequently, an innovation patent may be a more viable option for simple inventions that you want to commercialise quickly and have a shorter life span.

Types of Australian Patents

Standard Patent



Innovation Patent

Although cheaper, innovation patents are of limited use. While an innovation patent will be granted automatically if the formal requirements are satisfied, it is not enforceable until the Patent Office (IP Australia) has substantively examined the invention. In many cases, an innovation patent will not pass substantive examination and will be unenforceable. There have been numerous recommendations to abolish innovation patents (including most recently by the Productivity Commission in December 2016). In general, most inventors should consider applying for a standard patent.

Importantly, lodging an Australian Patent does not mean that you will have protection worldwide. To protect your invention in other jurisdictions, you will need to lodge an application directly with those countries or under the Patent Cooperation Treaty.

Most startups will not actually be in a position where applying for a patent makes sense. That is perfectly fine. Even if you do register a patent, you are unlikely to have the capital to enforce it against a competitor copying your invention. However, you should speak to a patent attorney about how to best protect your invention.

PROTECTING IP WITH REGARDS TO EMPLOYEES AND CONTRACTORS

You should ensure that your startup's intellectual property is appropriately protected and assigned when it comes to employees and contractors.

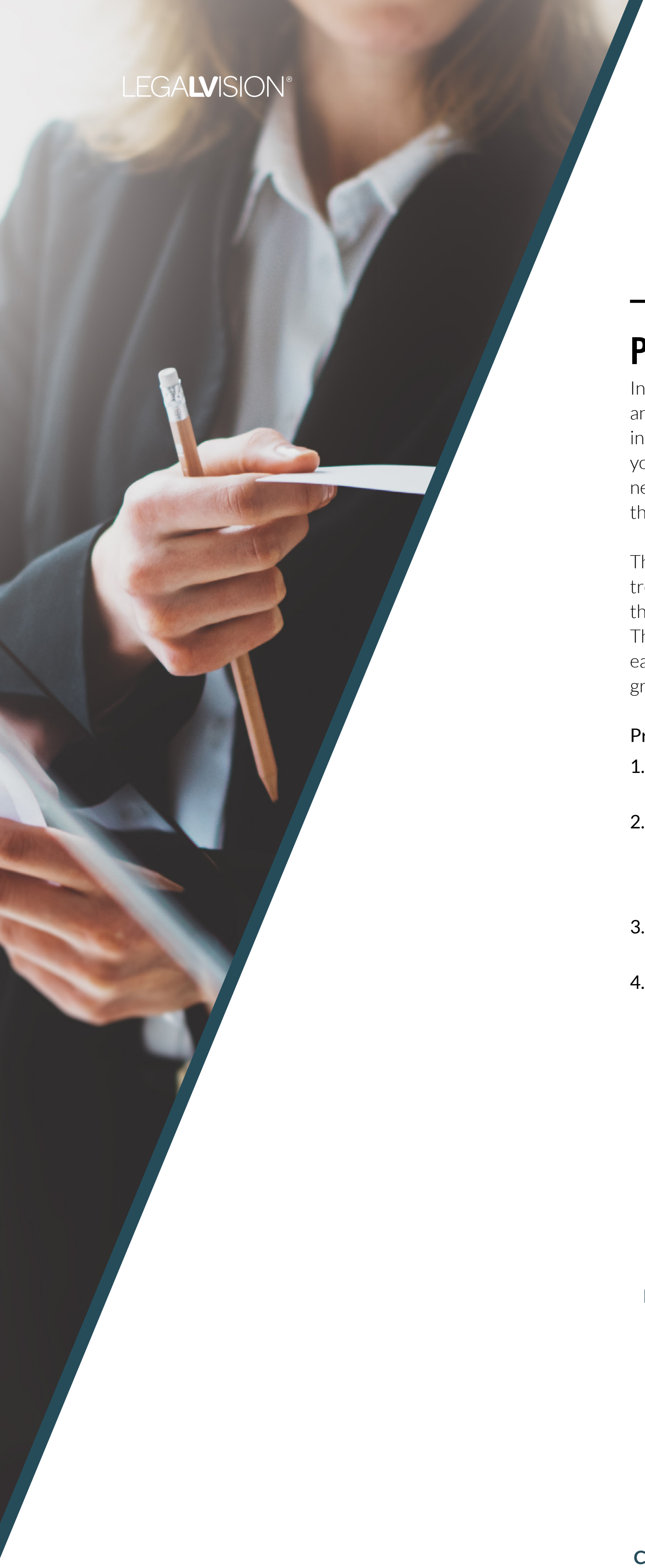
All employees and contractors should sign appropriate contracts that include strict confidentiality protections. This will mean that they cannot use or disclosure the startup's intellectual property to anyone during their employment or after they leave.

You should also ensure all the intellectual property created by the founders, employees and contractors of the startup is appropriately assigned to the company. This should include intellectual property created before the company was incorporated. You can do this through terms in the employee/contractor agreements, or with an intellectual property assignment deed. The common law makes certain presumptions to the effect that intellectual property created by employees in the course of their employment will be owned by the company, but it pays to spell out what the expectation is in an employment contract.

GOING GLOBAL: PROTECTING YOUR IP INTERNATIONALLY

Your intellectual property is one of your startup's most valuable assets. It is easy to overlook investing time registering your trade mark or domain name internationally. You're focusing on building your MVP and developing a marketing strategy for its launch. But planning for your startup's growth and entry into global markets will save you considerable time and costs which may later side-track your efforts.

The World Intellectual Property Organization (WIPO) administers systems enabling you to protect your inventions, designs and trade marks internationally. This significantly reduces costs and saves time, as businesses do not need to file several separate national or regional applications, which may be in different languages and require payment of duplicate fees.



PROTECTING YOUR INVENTIONS

Intellectual property rights are matters of national law, and patents are no exception. A patent will only have effect in the countries in which it is registered. This means that if you need patent protection in multiple countries, you will need to apply for a patent in each country. Fortunately, there is a system in place to facilitate this - the PCT system.

The Patent Cooperation Treaty (PCT) is an international treaty that sets up a system allowing inventors to protect their patents by filing one international application. The PCT has more than 145 member states. Importantly, each country's national or regional office still controls the granting of patents (the 'national phase').

Process

1. File an international application with a national or regional patent office;
2. International Searching Authority (ISA) conducts a high-quality search of the published patent documents and technical literature and produces a written opinion on your invention's potential patentability;
3. Content of your international application is disclosed to the world (usually 18 months from earliest filing date);
4. You can begin applying directly to patent offices in the countries in which you want a patent granted (usually 30 months from earliest filing date).

Registering a Patent Under the PCT

PROTECTING YOUR TRADE MARKS

In a similar way to patents, there is no such thing as a 'global' or 'worldwide' trade mark. Startup founders can protect their trade mark internationally by filing an application in each country directly or via a system known as the Madrid Protocol. The Madrid Protocol is an international treaty that facilitates registering trade marks in member countries. WIPO administers applications for international trade mark protection.

Process

1. Trade mark owner submits an application to IP Australia;
2. Trade mark owner submits international application through IP Australia and designates the countries in which they require protection;
3. WIPO receives the international application and performs a formalities check. If formalities are satisfied, the trade mark will be given an international registration number;
4. Application passed to the offices of the designated countries, who each assess the trade mark under their own national law. Each office separately issues a certificate of registration if the mark complies with national law.

Monitoring for Infringement

If you have registered a trade mark or domain name, it is your responsibility to monitor for infringement. You should be vigilant against unscrupulous (or even innocent) individuals who use your mark without permission.

An online presence is practically a requirement for all new businesses, and so, startups should be wary of domain name squatting or cybersquatting. Cybersquatting is when an individual or company registers in bad faith an identical or similar domain name. They usually do this with the intention of either:

- transferring the name to the legitimate owner at an inflated price;
- exploiting the brand's reputation by setting up a competitor website; or
- damaging the reputation by creating a slanderous website.

> **Quick Tip**
>
> **Monitoring your IP**
>
> - Set up a Google alert to keep updated on when others are using your trade mark without permission
> - Search IP Australia's database for registered trade marks and pending applications
> - Check ASIC to see if others are using your trade mark in their business name
> - Search the domain name register (Australia) or www.whois.com.au to see if someone has registered your domain name

Registering a Trade Mark Under WIPO

INSURANCE CONSIDERATIONS

The type of insurance your startup will need will be highly dependent on the industry you operate in. Common insurance requirements for startups include:

- Workers Compensation Insurance;
- Public Liability Insurance;
- Directors and Officers Insurance; and
- Business/Office Insurance.

More information about insurance types that you should be considering, and why, is set out in 'Insights: Choosing the Right Insurance'. Ensure you speak with an insurance broker about the types of insurance necessary for your business and put these in place early.

INSIGHTS:

CHOOSING THE RIGHT INSURANCE

Dominic Brettell
Head of Client Service at
Honan Insurance Group

As a startup, it is important to think about insurance not only for contractual reasons, but also to protect both yourself and your growing business. One mistake made in these early stages could mean the downfall of your business you have worked so hard to build. It is imperative that you protect your investment from the start – we have set out below key insurance you should consider.

Management Liability

A Management Liability policy is specifically designed to protect your company's financial wellbeing and directors' personal wealth. The cover commonly includes legal costs and potential damages associated with liability claims arising from actual or alleged wrongful acts associated with managing your company.

Professional Indemnity

If your startup provides professional advice or consulting services to clients, ensure you have protection against potential claims and disputes arising out of actual or alleged breaches of your professional duty.

Public and Products Liability

As a startup, many of the contracts that you will be asked to execute will require Public & Products Liability insurance. It is also important if any claims are made against you or your business for personal injury or property damage.

Workers Compensation

Businesses are required to have workers compensation by law, as you have an obligation to protect your employees if they are hurt in a work-related injury or illness.

Business/Office Insurance

If you run your business and operations onsite, it is important to protect the premises and its contents against loss of damage from fire, theft or natural disasters. Office insurance is often a requirement of commercial property leases.

Cyber Liability Insurance

As cyber attacks become increasingly common and regulations become more stringent with data privacy, cyber liability insurance is critical. Malware protection alone may not be sufficient for your startup with breaches leading to potential financial losses, claims from third parties and irreversible reputational damage. Consider cyber insurance to protect you in case of breaches to your IT security or employee errors.

Corporate Travel Insurance

In businesses where employees travel often, a Corporate Travel Policy will cover employees. A comprehensive policy may also cover family members.

Selecting an insurance partner should include choosing one that understands your business and your day-to-day risks. Factors to include in your decision include their ability to support you with expertise and experience as your startup evolves and grows.

FINAL WORD

Australia's startup ecosystem is still in its infancy. However, we are seeing a nationwide political and commercial commitment to investment in innovative businesses that contribute to a knowledge-based and technology-driven economy. This emphasis on innovation, and the increased funding that accompanies it, has the potential to positively impact Australian startups in a more profound way than perhaps any other industry.

LegalVision is itself a young, technology driven business. In our six years in operation we have grown from two team members to over 120. In that time we have assisted founders of startups with many of the challenges we have examined in this guide. In our experience, Australian startup founders are driven by a strong entrepreneurial spirit and a desire to create lasting economic change. We are committed to nurturing that spirit in the coming years.

GLOSSARY

Accelerator
A program which supports and facilitates the growth of startups, usually for a specified time through mentorship and training, networking events, hosting startups in co-working spaces and investing small amounts of capital in return for equity.

Advisor
This could be a lawyer, accountant or general business advisor who markets him or herself as a startup advisor. They may ask for a fee or equity in return for their services and should be carefully considered before being brought on board.

AIC Documents (also referred to as the AVCAL Documents)
Open source (free) capital raising documents prepared by the Australian Investment Council (AIC) (formerly the Private Equity & Venture Capital Association Limited (AVCAL)). The AIC is comprised of Australian venture capital funds, angel groups and other industry stakeholders. The documents are commonly used as a basis for a seed round. The suite includes a subscription agreement, shareholders agreement, employment agreement, and IP assignment agreement and SAFE instrument.

Angel Group
A network or organised group of angel investors who may share networks or pool investment funds to make joint investments.

Angel Investor
A high net worth individual who generally invests in startups in an early capital raising round. While they may not be willing to invest a large sum of money into your startup, they can bring know-how and connections to the table.

Anti-Dilution
A term commonly requested by VC investors to apply to their shareholding. It protects shareholders from dilution of their shareholding if the startup chooses to issue future shares at a price lower than the price previously paid by the investor. As a result of this term, the investor will receive an adjustment (similar to repricing of their shares) which will either lessen the effect of, or completely prevent, dilution.

Assignment (Intellectual Property Assignment)
Transferring ownership in something from one person or entity to another (often used in the context of intellectual property, for example, the assignment of intellectual property rights from an operating company to a holding company). Should be distinguished from a licence (defined below).

Bankruptcy
Occurs when an individual becomes unable to pay its debts.

Beneficiary
A beneficiary is someone who is entitled to a benefit/advantage from a trust. However, in the context of a discretionary trust, a beneficiary has no claim to any particular portion of the trust income or assets and will only receive such benefit at the discretion of the trustee.

Board of Directors
A group of people appointed to oversee a startup and make major decisions (with or without the approval of shareholders, depending on the circumstances).

Bootstrapping
A startup is said to be bootstrapping if it is funding itself based on its revenue, usually generated through customers paying for the goods or services the startup provides. A bootstrapped startup is one that has generally not received external capital.

Bridge Financing
Money given to a company by an investor which aims to fund the company until its next equity round. It will usually be replaced or increased by a larger investment in the upcoming round.

Burn Rate
The rate in which a startup spends its cash to pay its expenses. Used in finance forecasting to determine how much capital will be required in each round.

Buy-Sell Agreement
An agreement that sets out how a co-founder's share of the business will be dealt with if they can no longer work in the business. Commonly, the departing co-founder is bought out by either the other co-founder or the company itself. An entitlement to an insurance payment to finance this purchase is common.

Capital Gains Tax
Tax which is to be paid on a profit made from the sale of property or other assets (such as shares).

Capitalisation Table
A spreadsheet which sets out (i) all shareholders in the company and their shareholdings, and (ii) all shares allocated to the company's employee share option plan.

Cliff
The period before shares or options which are subject to vesting provisions begin to vest. For example, a common vesting schedule for founder shares is four years, with a one year cliff. In this case, no shares will be released from the vesting provisions until after the first year.

Confidentiality Agreement
Also referred to as a non-disclosure agreement, a confidentiality agreement is a contract between two parties that sets out how certain confidential information is to be dealt with. It is used to protect a startup's sensitive information from becoming public or being used in a damaging way.

Contractor
A person who performs work for your startup on a contract basis (rather than as an employee). Usually, this is at a fixed price, for a fixed period and the scope of work is predetermined and adjusted as necessary. A contractor will have their own ABN and will generally invoice your startup for work performed.

Conversion Discount
A discount applied when a convertible loan converts to equity at a trigger event.

Convertible Note/Debt
Commonly used in a startup's first investment round, a convertible note is a loan made to a startup by an investor which is to convert to equity at a predetermined trigger event (and generally, not be paid back).

Crowdfunding
The raising of smaller amounts of capital from a larger number of investors, usually via the internet and usually in return for future access to products or services.

Debt Financing
Raising capital for your startup by borrowing money in return for the payment of interest (rather than receiving money in return for shares).

Default	Inability or failure to repay a loan or make a required repayment.
Dilution	Dilution occurs when the percentage that a shareholder owns of a company is reduced as a result of the company issuing new shares.
Director	A person validly appointed to govern a company on behalf of its shareholders.
Discretionary Trust	A discretionary trust is a trust under which the trustee can exercise its discretion when distributing trust income amongst the trust's beneficiaries.
Dividend	A payment made by a company to its shareholders. Startups usually make the payment of dividends discretionary and it is rare for them to be paid at all in the early stages.
Due Diligence	A process whereby potential investors investigate a company they are looking to invest in. Investors are looking to confirm that everything promised in the pitch is accurate.
Employee	A person employed by your startup for a wage or salary either on a casual, part-time or full-time basis. Distinct from a contractor, the business is obliged to provide an employee with entitlements such as sick leave and superannuation contributions.
Employee Share Option Plan/Employee Share Scheme	A scheme in which employees are granted shares or options to buy shares in the company in order to incentivise and reward them.
Equity	Share ownership in a company.
Equity Crowdfunding	Equity capital raising where a large number of investors make small investments into a company in return for shares via an intermediary crowd-sourced funding service.
Equity Financing	Distinct from debt financing, equity financing involves the issuance of shares to investors in return for capital.
Escrow	Funds held by a third party until certain obligations/conditions are fulfilled by the contracting parties.
Exercise	When an option holder purchases shares under their option entitlement.
External Capital/ Investment	Money given to a startup (whether by debt or equity) which does not come from the founders.
Fair Market Value	The price that a third party would pay for shares in the market assuming they were interested (but not too interested) in purchasing such shares.
Founder	Someone who sets up, or is instrumental in setting up, a new company.
Friends and Family Round	Usually the very first round of capital raising for a startup where a small amount of capital is raised from friends and family members of the startup founders.

Fund	The vehicle through which a group of people can invest in a startup.
Future Liquidity Event	An event which will allow an investor to cash out on their investment, such as when a company is sold or publicly listed.
Government Grants	Government funding for selected and qualified startups. These include small grants (up to $25,000) to help get a startup off the ground or larger grants (up to $100,000) to accelerate growth and facilitate partnerships.
Guarantor	Someone who is responsible for the repayment of a loan made to a company in the event that the company is unable or unwilling to repay.
Holding Company	The top tier of a dual company structure, a holding company is a company which holds the valuable assets of the business (such as IP and cash) and owns 100% of the shares in the subsidiary operating company.
Incorporation	The process by which a business becomes a corporation (most commonly, a proprietary limited company). It involves registration with ASIC, issuance of an ACN and drafting the company documents including the company constitution.
Incubator	A program or entity which facilitates the growth of startups through mentorship, networking events, invitations to co-working spaces and potentially a small amount of funding. An incubator will likely be looking for a particular type of startup.
Indemnity	Security against a potential loss arising out of a contractual relationship between two parties. Generally, this is a promise by one party to protect the other should something go wrong.
Initial Public Offering (IPO)	The process in which a company offers shares to the public for the first time. After an IPO, the company will be considered a listed company and its shares can be traded on the stock market.
Insolvency	Occurs when a company becomes unable to pay its debts.
Institutional Investor/ VC	A large professional entity which pools money to offer larger-scale investment to startups which have gained traction.
Intellectual Property (IP)	Intangible property which is generally created as a result of creativity or knowledge. It includes copyright, trade marks and patents.
Issuance	The allocation of shares to a particular person or company, generally in return for payment.
Lead Investor	An investor in a startup who leads an investment round. Generally, the person/VC making the largest investment, they will take over the negotiation and can sometimes act on behalf of other investors.
Liability	Occurs when you are legally responsible for something.
Licence	The granting of the right to use or exploit something for a specified period of time, usually in return for a fee.

Liquidation
The process by which a company ends, usually as a result of insolvency/bankruptcy.

Majority Shareholder
The shareholder who holds the largest number of shares in the company.

Micro-VC
A fund which is larger than an angel group but smaller than a VC and made up of professional investors.

Non-Disclosure Agreement
See "Confidentiality Agreement".

Non-Compete
A clause in an agreement which restricts a person from working for competitors of a business within a certain geographical area or time period.

Operating Company
The bottom tier of a dual company structure, the operating company is the entity which enters into contracts and conducts the day-to-day operations of the business. Its profits flow up to the holding company.

Option
A right/benefit granted to someone (often an employee) which allows them to buy or sell shares in the company at a future date (and usually at a discount or pre-fixed price).

Option Pool
A proportion of shares set aside for the company to issue as options to employees in the future.

Pay to Play
A clause which accompanies an anti-dilution provision which says that if an investor does not participate in the future equity round, they will lose their anti-dilution protection.

Post-Money Valuation
The value of a startup immediately after an investment round.

Preference Shares
Shares which have preferential terms, rights and privileges when compared to ordinary shares.

Pre-Money Valuation
The value of a startup immediately before an investment round which is used to determine the equity an investor should be given in return for their investment.

Private Equity
Investment in private/proprietary companies.

Professional Investor
Someone who holds a financial services licence or at least $10 million in gross assets.

Proprietary Company
Often referred to as a private company, a proprietary company is one with less than 50 non-employee shareholders which is not listed/publicly traded.

Public Company
A company which is either listed or unlisted and which offers shares to the general public. Public companies are subject to a high level of regulation by ASIC.

Return on Investment (ROI)
The percentage profit an investor makes on their initial investment.

Revenue
The amount of money a company receives as a result of its business activities.

Scalability
The capability of a startup to expand and grow in a way that is effective, maintainable and does not negatively affect performance.

Secondary Sale
The sale of shares in a company by a shareholder to an investor that occurs as part of a capital raise.

Secured Debt
A loan made to a company which is secured against a particular asset (specific security) or all assets of the business (general security). If the debt is not repaid, the lender has a right to the security up to the value of the amount owed.

Security
Collateral for a loan which represents an interest in an asset or company.

Seed Round
Usually the first major financing round for a startup. A seed round is generally smaller scale and made up of friends and family and angel investors.

Series A Round
An early round of startup financing, a Series A round occurs after the seed round and is usually larger in scale. Generally, angel investors, micro-VCs or institutional VCs invest in this round.

Series B Round
The next round of startup financing following the Series A. Generally, occurs when the startup has moved beyond the development phase and is ready to substantially expand. Often it will involve existing investors injecting more into the business.

Series C Round (and beyond)
Subsequent venture rounds are used to scale the company, make acquisitions, maximise market share, grow internationally and prepare the company for an acquisition or public listing.

Sophisticated Investor
Someone who makes large scale investments (over $500,000), has net assets of at least $2.5 million, or a gross income of at least $250,000 for each of the last two financial years.

Subsidiary
A company which is controlled by another (parent or holding) company.

Sweat Equity
The term used to describe equity provided to someone in return for services to the company (and often instead of payment).

Term Sheet
A document summarising the key terms of an investment. Used to facilitate negotiation and often the basis of a shareholders agreement and/or subscription agreement.

Trustee
An individual or company which has been given the power to administer a trust for the purpose specified in the trust deed. They are the legal owner of the trust assets and they are legally obligated to act in the best interests of the trust.

Unsecured Debt	A loan made to a company which is not secured against any asset.
Valuation	The value ascribed to a company through financial modelling or more commonly via agreement between a startup and its investors.
Venture Capital	Financing provided to a startup by a VC fund in return for equity. Usually occurs after a startup has raised seed capital but is still generally early stage.
Vesting	A restriction period on shares (usually founder shares) which prevents the shareholder leaving the company with his or her shares before they have vested. Any unvested shares will be forfeited, generally at a discount to fair market value.
Warranties	Assurances made by a company and its founders about the company.

ABOUT LEGALVISION

LegalVision is a market disruptor in the commercial legal services industry. Our innovative business model and custom-built technology assist our lawyers to provide efficient, high-quality and cost-effective legal services. LegalVision is a leader in delivering legal services in Australia and has assisted more than 100,000 businesses and startups.

We encourage readers to draw on the insights in this Startup Manual wherever useful. If you would like any further information, please call us on 1300 544 755.

ABOUT THE AUTHORS

Lachlan McKnight

Lachlan is the CEO of LegalVision, an innovative and tech-driven law firm. LegalVision is disrupting Australia's legal industry and transforming the way in which Australian businesses access legal services. Lachlan previously worked as a corporate lawyer and investment banker in London, Paris, Amsterdam and Hong Kong.

Jill McKnight

Jill is a Practice Group Leader at LegalVision. Jill started her legal career in London and has since worked in Paris, Amsterdam, Hong Kong and Sydney. Jill specialises in startups, including convertible loans and SAFEs, venture debt shareholders agreements, issuing equity and employee share schemes.

Madeleine Hunt

Madeleine is a Senior Lawyer in LegalVision's Corporate Advisory and Capital Raising teams. Madeleine has assisted a large number of Australian startups with their legal needs. She provides end-to-end guidance for companies as they scale, from choosing the right corporate structure and deciding on funding options to helping facilitate complex Series B transactions for later stage startups.

OUR AWARDS

2019 NewLaw Firm of the Year
Australian Law Awards

2018 Fastest Growing Law Firm in APAC
Financial Times 1000

2018 NewLaw Firm of the Year Finalist
Australian Law Awards

2018 Top Startups List Top 20
LinkedIn

2018 Best IP Law Team
Professional Services Awards

2018 AFR Fast 100 List Finalist
Australian Financial Review

2018 Tech Fast 50 List Finalist
Deloitte Technology Fast 50

2017 NewLaw Firm of the Year
Australian Law Awards

2017 Customer Service Experience of the Year
Optus My Business Awards

LEGALVISION®