

Checklist



# MAXIMIZING YOUR POTENTIAL

12 Tips for Building a Successful Start-up

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

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

2. **Determine your company's short-, medium- and long-term funding strategy at the outset.** Developing an appropriate funding strategy is crucial to the success of your company and will impact who controls the company in the future and what profit you make upon exit. What is your «funding strategy?»

- If you can, raise money at true value inflection points; i.e., when measurable milestones have been reached and your company is much more valuable for having achieved them. Talk to an experienced VC firm to identify the relevant milestones in your growth story.
- What is the funding amount required to move (comfortably) from one inflection point to the next? Perform a headcount and cash-burn analysis.
- Identify appropriate funding sources to match the funding strategy: Friends & family, high net worth individuals, angels, VCs or strategists.
- Identify the appropriate funding instrument to match the funding source (common stock, preferred stock or convertible debt).
- Ensure that specific preferential investors' rights apply only if and on the condition that such investor takes part in future investment rounds («pay to play»).

3. **Do not allow your product development, sales and marketing, personnel costs or IP strategy to get ahead of your funding strategy** (everything should be aligned).

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



## 5. **Founder issues:**

- Allocation of founder's stock: Sometimes «co-founders» are really just early employees. Therefore, allocate shares of stock based on expected short- and long-term contributions and ensure that this is appropriate given the other hires required down the road.
- Also, avoid transferring founders' stock post incorporation: From a tax perspective, this is a nightmare for founders. Founders should, whenever possible, subscribe to all of their founders' shares of stock at incorporation.
- If considering VC funding or if there are multiple founders, think about (reverse) vesting on founders' stock (avoid the «free rider» dilemma - it generally cannot be fixed after the fact). Provide for sensible good leaver/bad leaver rules from the very beginning with the company's growth/exit perspectives in mind.
- What is the appropriate vesting period/upfront vesting? Ask the question: «If Sandra leaves in 6/18/36 months, would the percentage vested be appropriate given the expected value contributed by her to that point?» If not, the vesting period is too short. Is acceleration appropriate?
- Consider milestone-based vesting if appropriate (e.g., for technical co-founders) if their contribution will be critical/beneficial to the company in reaching the value inflection points (or a combination of time- and milestone-based vesting).

# «DEVELOPING AN APPROPRIATE FUNDING STRATEGY IS CRUCIAL TO THE SUCCESS OF YOUR COMPANY AND WILL IMPACT WHO CONTROLS THE COMPANY IN THE FUTURE AND YOUR PROFIT UPON EXIT.»

**6. Issuance of stock to founders, employees and advisors:** Rarely, if ever, should shares of stock be issued that are not subject to vesting.

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

**8. Build a strong board of advisors** to, among other things, fill the gaps in your team's core competences (if you cannot afford to buy the skills early on, rent them or grant them shares or options). Get in touch with [innosuisse - Support for start-ups: www.innosuisse.ch](http://innosuisse.ch)

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

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

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

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

## About our Start-Up and Venture Capital Practice Group

Wenger Vieli's Start-Up and Venture Capital Practice Group assists start-ups, emerging growth companies and VC investors in various fields, including information technology, telecommunications, life science, cleantech, impact investments, cryptocurrencies, block chain technologies, crowd funding, and many more. Furthermore, Wenger Vieli is a leading Swiss advisor of national and international corporate venture teams.

We see young entrepreneurs and start-ups as the very core of our firm's and our young lawyers' future. Having a strong focus on start-ups and venture capital, Wenger Vieli strives to invest into your venture's success and – by doing so – into the future of our own firm.



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