



Issues to Think About if Starting a Business

A list of issues to think about. Not necessarily apt for all situations, but a good base which a few people have now used to ground their thinking.

If you are interested in starting up a business and, after reading this, have any questions, please feel free to contact us.

Right Business Structure / Entity	Partnership/Shareholders Agreement
<p>One or more of sole trader / company / trust (unit or discretionary) / partnership</p> <ul style="list-style-type: none"> • Keep it to simple tax effective structures adaptable for the future • Problems raising money for a trust • Research and development tax offsets • Employee share schemes • Structuring – Risk - tax and asset protection issues • Company constitutions –start-up tailored – directors & control – advisory boards for risk management reasons – ownership of shares individual/family/trust • Who owns the IP – the vehicle or is it licensed to the vehicle • If you have an accountant, see what he or she says as they should know your asset position 	<p>Profoundly important to get this right and flexible enough at the outset - need to have provisions for exit of one or more when things and/or personality clashes in the way</p> <ul style="list-style-type: none"> • Board representation - ratios / voting • Veto rights / special, resolutions / unanimous, resolutions / ordinary majority decisions • Vetting of new investors/participants • Share classes • Valuation method • Pre-emptive rights and valuation for share transfers and share allocations • Put and call options / drag along / tag along rights • Death / disability – buy-sell and insurance issues • ADR and dealing with disputes

Funding Options Start-Up in Early Stages	Legal Issues
<ul style="list-style-type: none"> • Paying for it & giving equity – financial, ethical and legal issues • Seed funding • Grants– government – benefactors • Australian Small Scale Offerings Bought • Crowd equity funding, types of equity, hybrids • Disclosure requirements • Pluses and minuses of convertible notes 	<ul style="list-style-type: none"> • What laws apply in addition to general business laws • Opening it up – prospectus problems • Sophisticated investor exemption • Crowd funding problems and possibilities • Relevance of financial services or other licences needed for to the operation • Privacy issues and security • Any problems with existing employment bearing on issues (like IP)

<ul style="list-style-type: none"> • Practicalities of valuation, removal and control • Relevance to shareholders agreement/partnership • What does your bank have to say? 	<ul style="list-style-type: none"> • Anti-money laundering • Containing costs • Premises and occupation rights
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<p style="text-align: center;">Protecting the Startup Entity and Related IP</p> <ul style="list-style-type: none"> • Consider what IP types are relevant - Who owns it?, How is provided to the Startup?, How is controlled and/or shared and commercialised? • How to protect ideas, as such • Boundaries of different types of IP protection trademark, copyright, domain names, patents, confidentiality, registered designs • Issues with trademarks¹ (such as classes) what it can and can't protect and where • Search to see what is already registered • Cost of IP protection particularly in overseas contexts – where to protect by registration • Importance of NDAs • Who owns the IP? The operating entity or the creators? Licensing and transfer issues including valuation • How to protect software • Cyber squatting, trademark, patent trolls • Patents versus copyright • Trade marks versus copyright • Apps in context of legal protection of IP • Options for contractual protection and their efficacy 	<p style="text-align: center;">What Contracts Does the Startup Business Need?</p> <ul style="list-style-type: none"> • Confidentiality / Non Disclosure Agreements • Contract contents • Dealing with privacy and data security issues, particularly in online contexts and business records • Apt agreements with customers • T&Cs inclusions and exclusions • IP protection • Priority contracts • Supplier agreements and procurement • Which contracts and what things are needed when • Problems with exclusivity / restraint of trade • Overseas contract issues
<p style="text-align: center;">Research and Development Tax Offsets</p> <ul style="list-style-type: none"> • Tax issues • Qualifying to refundable tax offset • Other options • What does required innovation mean? • Employee/contractors and subcontractors 	<p style="text-align: center;">Employees and Contractors</p> <ul style="list-style-type: none"> • What's the difference? • Cost of staff • The Law sometimes sees contractors as staff • Exposures to staff • Contractor versus employee - distinction and markers • Status and role of original innovator founders • Fair Work Act • Workplace Health and Safety costs • State Payroll Tax • PAYG and Superannuation Guarantee liabilities

¹ A separate flier on trademark process and protection is available on request to roiss@eakin.com.au.

	<ul style="list-style-type: none"> • Impact on IP ownership of employment arrangements • Impact on IP ownership of "contractor" / "employee" relationships and how to deal with it
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Leaving the Start Up	Employees Share and Option Plans
<ul style="list-style-type: none"> • Provisions for departure of founders • Newcomers and dilution • Buyouts • Trade sales and IPOs • License IP when leaving whether to and whether practical • Sale /licensing of business v sale of entity • Continuation of some staff • Franchising • Restraint of trade issues on leaving 	<ul style="list-style-type: none"> • Impact of new rules and laps of old rules • Defining start-up • Employees not contractors • Timing and tax • Effective share option structures • Impact of an employee leaving

Legal, Tax and Accounting Advice, Stage by Stage
<ul style="list-style-type: none"> • What and when – staging • What are the stages and when to have to start considering them • Timing • Priorities • Price • Prioritising issues

The above was prepared for and is intended to provide a broad general overview about the topics covered. It is not intended, and must not to be relied upon, as definitive legal advice. Whilst Eakin McCaffery Cox have made every effort to ensure the information in this work is up to date and accurate, they do not accept any responsibility or liability for any errors or inaccuracies.

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