

Founders' 101

Lifecycle Of A Startup: From Idea To
Funding

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startupteam.nda@nishithdesai.com

I. IDEA: WEIGH THE RISKS VS. REWARDS

1. I have an idea. Is it really solving for a problem?
2. Is the idea capable of transforming into a business?
3. Can I patent/copyright my idea?
4. Will I have competition if I start a business based on the idea I have? Who will be my direct competitors?
5. What is the differentiation strategy (my special sauce!) I have in mind vis-à-vis my competitors?
6. Do I need a co-founder?
7. Where do I start from?
8. Who should I reach out to? Lawyer, consultant, company secretary, investors?

II. PRE-INCORPORATION: GETTING READY FOR SET UP

1. Where is my market and where will my customers be?
2. Which jurisdiction (US, London, Singapore, Mauritius) should I incorporate an entity in?
3. What are the tax, legal and strategic concerns to consider before incorporation?
4. How much funds do I need to incorporate a company?
5. What is a business plan? Why is a business plan important?
6. How do I determine my startup costs and associated expenses?

III. INCORPORATION: READY, STEADY, GO

Choice of Entity & Share Capital

1. What type of entity should I incorporate – Partnership, One Person Company, Private Limited, Public Company or Limited Liability Partnership?
2. How much minimum capital do I need to set up the entity?
3. What is share capital and how is it classified? (Authorised vs. Issued/ Equity vs. Preference)
4. How many partners/shareholders do we need on Board? Do they need to have any qualifications?
5. How does the distribution of units/ issue of shares work?
6. What are the documents required for filing an incorporation application before the Registrar of Companies?

Place of Business

7. Where should I have my principal place of business/ registered office?
8. If I am looking at a premise on rent/lease, do I need to have an agreement in place to protect my rights as a lessee/ tenant? What are the key clauses to look out for in a rent/ lease & license agreement?

Directors

9. Who will be the directors on board? What is an executive/ non-executive director?
10. What is the minimum and maximum number of directors required under law?
11. Is there any qualification (including requirement to hold qualification shares) required to be a director?
12. What are the statutory roles and responsibilities of a director?
13. What are the liabilities of a director (executive and non-executive)?
14. Do I necessarily need to have a resident director/ women director on board?
15. Can a person resident outside India and citizen of other country become a director of an Indian entity?
16. Can a body corporate or a company be a director of an Indian entity?
17. What are the documents required from a person proposed to be appointed as a director on board? What is a DIN/ DSC?

Compliances

18. What are Charter Documents? Why are these important?
19. What is the eligibility criterion for recognition as a 'startup' under the Startup India Action Plan? What are the associated benefits of such recognition?
20. What are the central/ state specific regulations applicable to the proposed business?
21. How do I register the name and domain of the business along with the entity?
22. Do I need any kind of a regulatory permission prior to the commencement of my business?
23. Post incorporation of the entity, do I need to appoint a statutory auditor and a Compliance Officer to track, monitor and adhere to the applicable compliances under applicable central/ state legislations.

Miscellaneous

24. Who shall be my banking partner?
25. What kind of bank account do I need?
26. What do I need to know about financial statements?

IV. EMPLOYEES: MY PEOPLE, MY STRENGTH*Contracts – Employees, Consultants, Co-Founders*

1. How many employees do I need to have to begin with?
2. What kind of jobs can be outsourced to external consultants?
3. What is the difference between employees and consultants and how does the law differentiate between them?
4. What kind of contracts do I need to execute with the employees?
5. What are the key clauses of a Non-Disclosure Agreement, Employment Agreement, IP Assignment Agreement, Separation Agreement, Consultancy Agreement?
6. Do I need to have an agreement inter-se the Founders and What are the key clauses thereto?

ESOP

7. What is an Employee Stock Option Plan? How does it work?
8. Who is eligible for the ESOP (employees, directors, founders, consultants)?
9. Can stock options be granted to consultants/ advisors?
10. What do the terms 'grant', 'vest' and 'exercise' mean in the context of an ESOP?
11. Is grant of an ESOP taxable?
12. Is issue of shares pursuant to exercise of an ESOP, taxable?
13. How to structure the compensation (including the ESOP) in a tax efficient manner?

Compliance/ Policies

14. Do I need to have an employee handbook in place and if yes, does it need to be customised for each office location?
15. Is employee handbook a statutory requirement?
16. What are the policies which are mandated by law and what are some of the examples of policies that vary from state to state?
17. Is applicability of certain labour laws dependant on the number of employees in the organisation?
18. Under what circumstances, can consultants be classified as employees?
19. Does non-compliance of labour laws trigger criminal liabilities under law?

V. CORPORATE COMPLIANCE: GETTING YOUR HOUSE IN ORDER

1. How many board/ shareholders' meetings are required to be conducted in an year?
2. What is the statutory notice and quorum requirement for such meetings?
3. Is physical attendance mandatory for all meetings and is audio-visual an acceptable mode of attending meetings?
4. How to prepare the minutes of meeting?
5. What are the statutory filings to be made on a monthly/ quarterly/ yearly or otherwise to the Registrar of Companies?
6. What are ordinary/ special resolutions?

VI. INTELLECTUAL PROPERTY

1. Have I taken inventory of my company's Intellectual Property ("IP")? Has it been valued in the books?
2. Do our employment/ consultancy agreements have robust IP clauses to assign the rights to the company?
3. If the development of IP is outsourced to third parties (including interns), do we have strong IP assignment clauses in the contracts with such third parties?
4. What is an ideal IP clause to include in customer contracts, vendor contracts, and end-user contracts?
5. Have I applied for trademark registration for all our brands, both words and images?
6. Have I registered domain names on all relevant brand names?
7. Is our domain name registered in the name of the company's (rather than an employee's or other individual's name)?
8. What are the steps to keep our proprietary information (including source code) safe?
9. Can I submit a patent application for any proprietary product or process?

VII. TECHNOLOGY AND DATA PROTECTION

1. What are the kinds of data we process as an entity?
2. Do we need to have a robust information security policy in place, including standards with respect to encryption, access controls, and disclosure? Is it required to be compliant with the ISO 27001 standard?
3. Do we need to have a privacy policy in place which adequately describes what data we collect, why we collect it, who we can share it with, name of grievance officer, and other requirements under the Information Technology Act, 2000?
4. Do we need to have a privacy policy for the data we collect from our employees (and not just customers)? Does it need to be tailored to our business model?
5. Do we need to take explicit consent to the privacy policy and terms of use?
6. If we execute electronic agreements, such as those provided by services like DocuSign, do we need to obtain legal advice to ensure they are binding on electronic signatures and stamp duty?
7. How do we ensure that we are in compliance with third party agreements like cloud services and app stores?
8. How do we ensure that any data analytics exercises being carried out by the company are in compliance with applicable privacy laws?
9. If we export software products or services, how do we assess our compliance with foreign exchange laws?

VIII. TAXATION

1. What tax rate will apply to my company?
2. I am cash strapped. Can I get a tax holiday / special tax incentive for income earned from my business?
3. Do I need any registrations to qualify for tax incentives?
4. What about tax losses, can I carry them forward? What if I get seed investment, will my tax losses be disallowed?
5. What is Angel tax? Will this apply to my company on receiving external funding?
6. Are there any special tax benefits available to founders investing into the company?
7. Is there a tax if I sell part of the shares to seed investors?
8. How will the founders/ investors be taxed in jurisdictions like US, UK, Singapore if the company flips to these jurisdictions?

IX. SEED FUNDING: ARE YOU INVESTOR READY?

1. What is a Term Sheet and how to negotiate it in your favour?
2. What is a legal due diligence and why is it important?
3. What is a Shareholders' agreement/ Share subscription agreement and the key clauses thereto?
4. What are the key rights that the Founders must retain, after the proposed investment?
5. Is my business eligible to receive foreign direct investment as per the foreign exchange laws of India whether under the automatic or government route?
6. What are the approvals (statutory or contractual) required to be obtained by the entity prior to the closing of the proposed investment?
7. What are the kinds of shares (equity, preference, compulsorily convertible, optionally convertible, non-convertible) that can be issued to an incoming investor (domestic/ foreign)?
8. Can shares be issued at par/ premium?
9. Do shares need to be valued differently if they are to be issued to a foreign investor?
10. What is the protection accorded to minority shareholders under law?

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

tel +91 22 6669 5000
fax +91 22 6669 5001

SILICON VALLEY

220 California Avenue, Suite 201
Palo Alto, CA 94306-1636, USA

tel +1 650 325 7100
fax +1 650 325 7300

BANGALORE

Prestige Loka, G01, 7/1 Brunton Rd
Bangalore 560 025, India

tel +91 80 6693 5000
fax +91 80 6693 5001

SINGAPORE

Level 30, Six Battery Road
Singapore 049 909

tel +65 6550 9856

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra-Kurla Complex
Mumbai 400 051, India

tel +91 22 6159 5000
fax +91 22 6159 5001

NEW DELHI

C-5, Defence Colony
New Delhi 110 024, India

tel +91 11 4906 5000
fax +91 11 4906 5001

MUNICH

Maximilianstraße 13
80539 Munich, Germany

tel +49 89 203 006 268
fax +49 89 203 006 450

NEW YORK

1185 Avenue of the Americas,
Suite 326 New York, NY 10036, USA

tel +1 212 464 7050