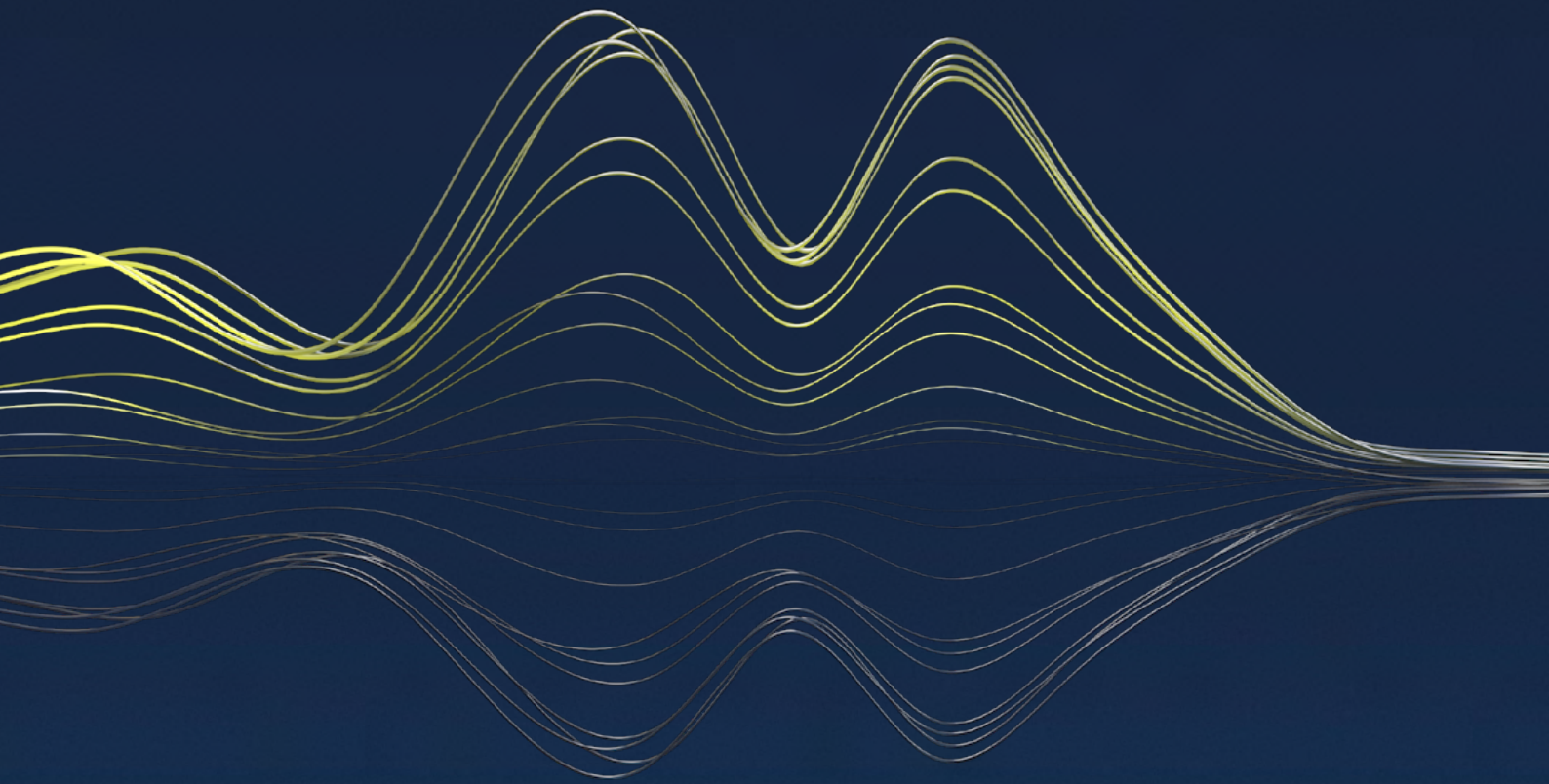


New Zealand Start-up Pack 2023



This Start-up Pack has been designed and prepared by DLA Piper's High Growth initiative, which includes lawyers with expertise in intellectual property, corporate, employment, regulatory and tax matters.

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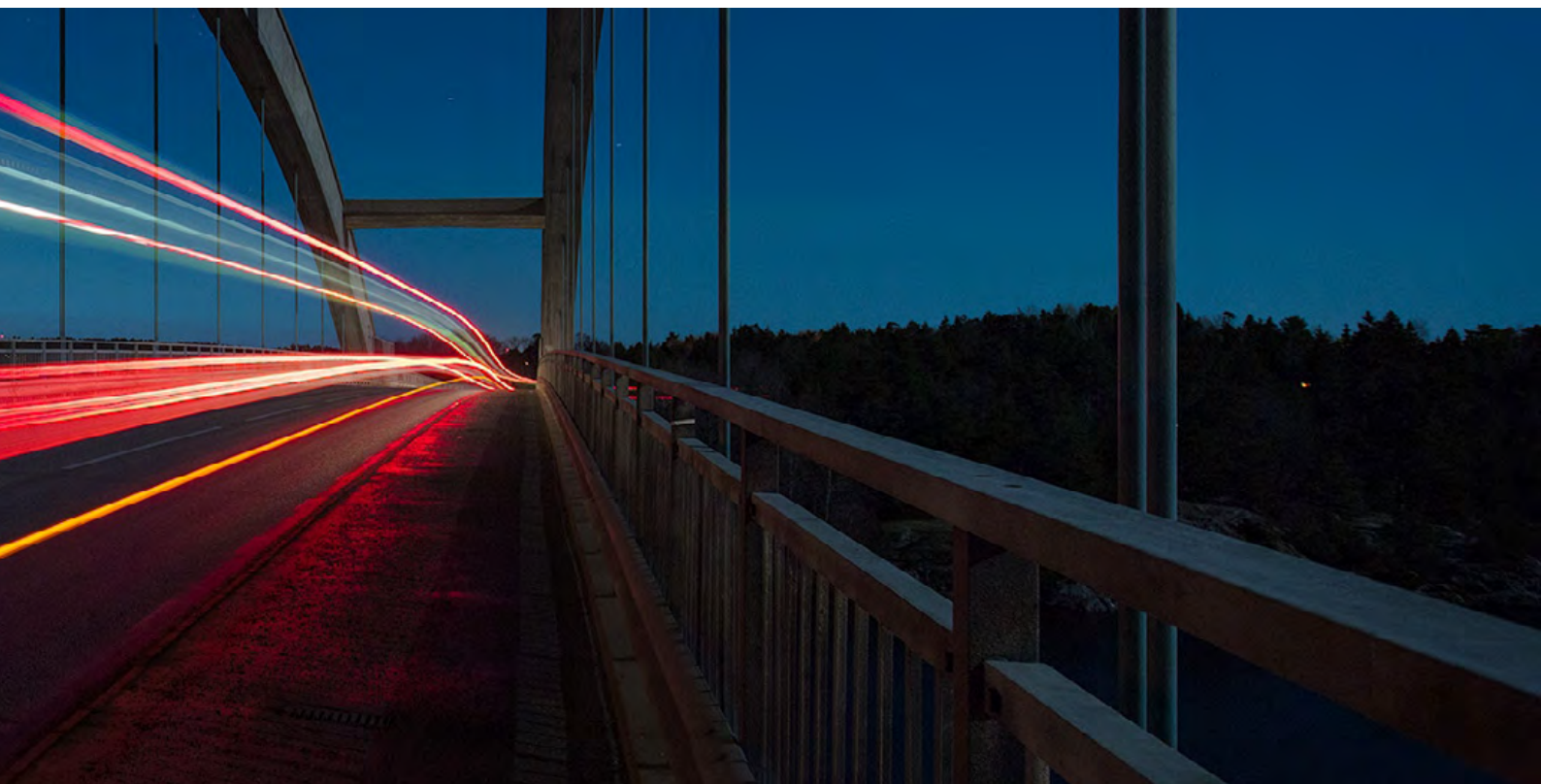
Foreword

DLA Piper is a leading global business law firm. We are among the world's largest and most geographically diverse legal practices with clients ranging from start-ups and high growth companies to NZX and ASX listed companies. Most importantly, we recognise the benefits of working with companies across the corporate life cycle.

We have a wealth of national and international expertise in the high growth sector, having been established in Silicon Valley for more than 30 years and having a significant presence in most high growth hubs across the world.

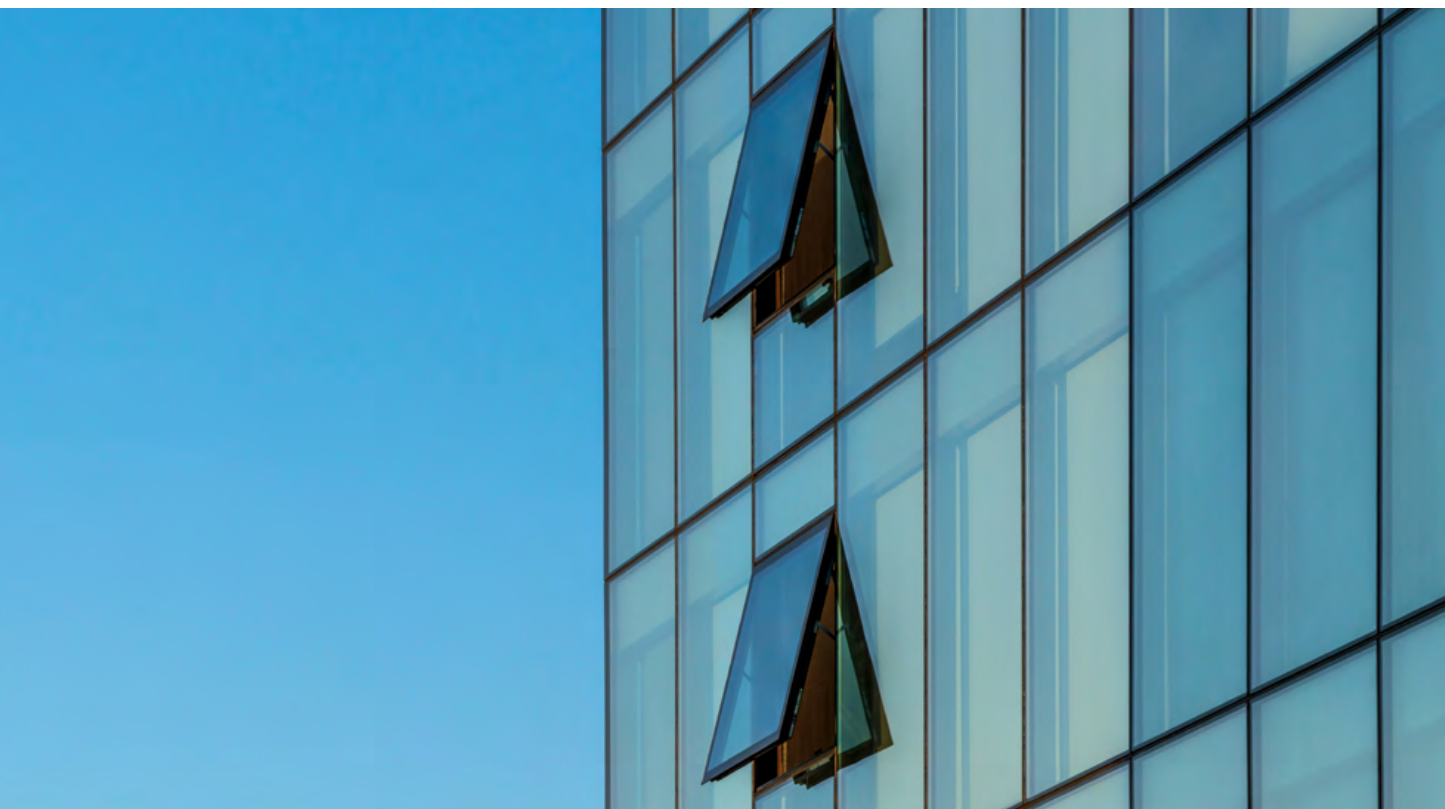
We have lawyers with specialist knowledge across six continents, and our teams include award-winning lawyers practising IP strategy and enforcement, M&A, corporate, licensing and distribution, taxation, and structuring advice. They also support clients across all other areas needed to address risk, including litigation, investigations, government affairs, environmental law, import/export, real estate and employment law.

Based on this experience and presence, we are best placed to provide better and more focussed advice to start ups and high growth companies and can utilise our global network of business relationships with venture and strategic investors, lenders, entrepreneurs and corporates to help start-ups get organised and funded.



Welcome to the DLA Piper Start-up Pack for New Zealand

This Start-up Pack has been designed and prepared by DLA Piper's High Growth initiative, which includes lawyers with expertise in intellectual property, corporate, employment, regulatory and tax matters.



The purpose of this Start-up Pack is to provide assistance and support to early stage start-ups and high growth companies in New Zealand that are looking to establish their business on a more formal basis. Creating the right legal framework and ensuring that the business is protected at the outset is vital for a business to achieve its full potential.

We have drawn from our significant experience in advising companies at all stages in the corporate life cycle to assist start-up companies with understanding some of the key legal issues that are likely to be relevant to them at this stage of their development.

This Start-up Pack contains the key legal documents that an early stage start-up in New Zealand will need and includes:

- a constitution;
- a subscription and shareholders' agreement;
- an intellectual property assignment agreement;
- a non-disclosure agreement;
- a standard employment contract; and
- standard terms for website use (including a privacy policy).

We have also included the following guidance notes and checklists:

- a step by step guide to setting up a limited company in New Zealand;
- an intellectual property, sales and marketing checklist;
- a tax checklist; and
- a guide to the New Zealand regulatory framework for raising equity finance.

The information contained in this Start-up Pack is offered open source and is freely available. It is intended to be shared amongst the start-up and high growth community to educate and provide assistance to start-ups to reach their full potential.

A FEW WORDS OF WARNING..

We very much hope users of this Start-up Pack enjoy the benefits of the information enclosed and gain a greater understanding of some of the key legal issues that they are likely to face and how to tackle such issues with greater knowledge and awareness.

The documents in this Start-up Pack are intended as a general overview of some of the key legal issues that are likely to be relevant to start-ups and high growth companies. It is not possible to

provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this Start-up Pack, we recommend that you seek legal advice before taking any further action.

This Start-up Pack is intended as a general overview and discussion of the subjects dealt with. The information provided here was

accurate as of the day it was published (March 2022), however, the law may have changed since this date. The information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken, or not taken, in reliance on this information.

This Start-up Pack is subject to the terms and conditions of use stated on the [final page](#).



An Introduction to Key Legal Documents For Start-Ups



This Start-up Pack includes not only legal documentation that a start-up or high growth company may wish to adopt to formalise their business, but also useful guides and checklists. They have been prepared by lawyers with experience in corporate, intellectual property, employment and tax matters and are aimed at early stage businesses (mainly, those who are considering setting up a company or those who have very recently incorporated).

Incorporating a Limited Liability Company in New Zealand

One of the first legal steps that any entrepreneur should consider is the incorporation of a limited liability company. A limited liability company is the most common vehicle for start-ups in New Zealand. As an overview, the benefits of forming a limited liability company include the following:

- a limited liability company has a distinct legal personality separate from its owners. It can enter into contracts with third parties, hire employees and also is likely to be required for the purposes of financing (whether it be by crowd funding, equity investment or bank debt);
- it enables the founders to control their exposure to financial risk.

Whilst a founder's investment in the start-up may be lost a founder's home and other assets will be protected; and

- a company can serve as a vehicle for intellectual property to be pooled and protected. If intellectual property has been developed with a group of colleagues, a company enables the founders to transfer the ownership of the IP to the company in exchange for a share in the ownership of the company.

This Start-up Pack is aimed at early stage and high growth businesses considering a limited liability company structure, which will be registered in New Zealand.

If you are considering alternative business structures or expanding or starting your business in another

jurisdiction, you may need to obtain specific local law advice. For a general overview of the issues or considerations that may be relevant, please see our '[Going Global](#)' guides, which provide an excellent overview of corporate, employment, intellectual property, employee share scheme and tax considerations in a number of key jurisdictions across the world.

Note: any choice of business structure should be carefully considered from a tax perspective. If you are in any doubt as to whether a company is the best structure for you, please consult us or your tax advisor for more detailed advice.

A step-by-step guide to setting up a company in New Zealand is provided in this guide. →

Key Legal Documents

The Constitution

With respect to the governance of a company, the two most important documents are the constitution and the subscription and shareholders' agreement (**SSHA**).

The constitution is a contract between the shareholders and the company, which must be filed at the New Zealand Companies Office. The purpose of the constitution is to regulate the internal management of the company and how power and control is shared between the shareholders of the company and its directors. The constitution addresses not only the day-to-day practicalities of running the company, but also other important information regarding the make-up and ownership of the company.

A key issue, that is often fatal for an early stage company, is a dispute arising between co founders or a co founder leaving the business. We have prepared a constitution that includes provisions that regulate this very scenario.

A precedent constitution has been provided in this Start-up Pack. →

The subscription and shareholders' agreement

The SSHA is a private and confidential document that records the commercial terms of the arrangement between the parties and will include specific details of any relevant proposed subscription for shares and any other key terms of the investment.

The SSHA in the Start-up Pack is subject to the terms and conditions

of use stated on the final page and has been prepared on the basis of start-ups and high growth companies receiving seed financing from friends and family and/or other private investors. The SSHA has two main purposes:

- to provide the legal mechanism for an investor to subscribe for shares in the company (typically including details on price, conditions and number of shares); and
- to define the rights and obligations of the shareholders and to govern their relationship between one another and the company.

The SSHA will need to reflect the commercial agreement between the founders and/or any investors and it is important for the correct balance to be achieved.

Founders should give detailed consideration to how much equity to make available to investors as this may have a significant impact at the time further investment is sought. For obvious reasons, founders are likely to want to retain as much of the issued share capital of the company as possible. If the terms of the SSHA are in dispute, further legal advice may be required.

A precedent SSHA has been provided in this Start-up Pack. →

The intellectual property and assignment agreement

Intellectual Property (**IP**) is one of the most important parts of any business, particularly for companies in the technology or life sciences sectors, where it can be vital.

If IP is or may be key to your business, you should take care when entering into any agreement that involves sharing or using IP, whether yours or a third party's.

An assignment of IP, transfers the ownership and rights of the IP specified in the assignment from one person to another.

The IP assignment agreement (**IP Assignment Agreement**) provided is a simple assignment for transferring ownership of relevant IP rights of an individual (e.g. the IP rights created by that individual in connection with the business prior to becoming an employee, director or shareholder or a consultant) to the company. Under the IP Assignment Agreement the individual no longer has any rights in or to the IP assigned.

Note: the IP Assignment Agreement should only be used for straightforward circumstances to transfer existing IP, where the IP is easy to identify and define. IP must be described in sufficient detail to identify clearly what is assigned. If IP is not correctly described, the assignment may not be effective and may not transfer the IP that you want it to transfer. It is important to make sure that the assignment is consistent with the terms of any other agreement that you have with the particular individual.

If you are in any doubt or if the IP concerned is particularly important, valuable, difficult to define or if there is any additional complexity (eg in terms of ownership), we recommend that

you seek legal advice to ensure it is properly transferred and all issues are covered.

A precedent IP Assignment has been provided in this Start-up Pack. →

The non-disclosure agreement

At the outset, a valuable tool for protecting a business is to maintain confidentiality of company information and IP. However, the need to maintain confidentiality must be balanced with the need to elicit further investment and/or collaboration with third parties. In order to do so, certain confidential information may be required to be shared with such third parties. Before sharing sensitive or confidential information it is ideal to have a non-disclosure agreement (NDA) in place, wherever possible. Where it is not possible to put an NDA in place, a company could seek to protect company information and IP by making it clear in writing that any

information provided is confidential and should not be disclosed to any other person and by limiting the disclosure of such information to a need to know basis. Please be aware that venture capitalists and angel investors often refuse to sign NDAs on the basis that, amongst other things, to do so may restrict their ability to seek out and evaluate other potential investments. This NDA may need amendment if it is to be used for potential investors.

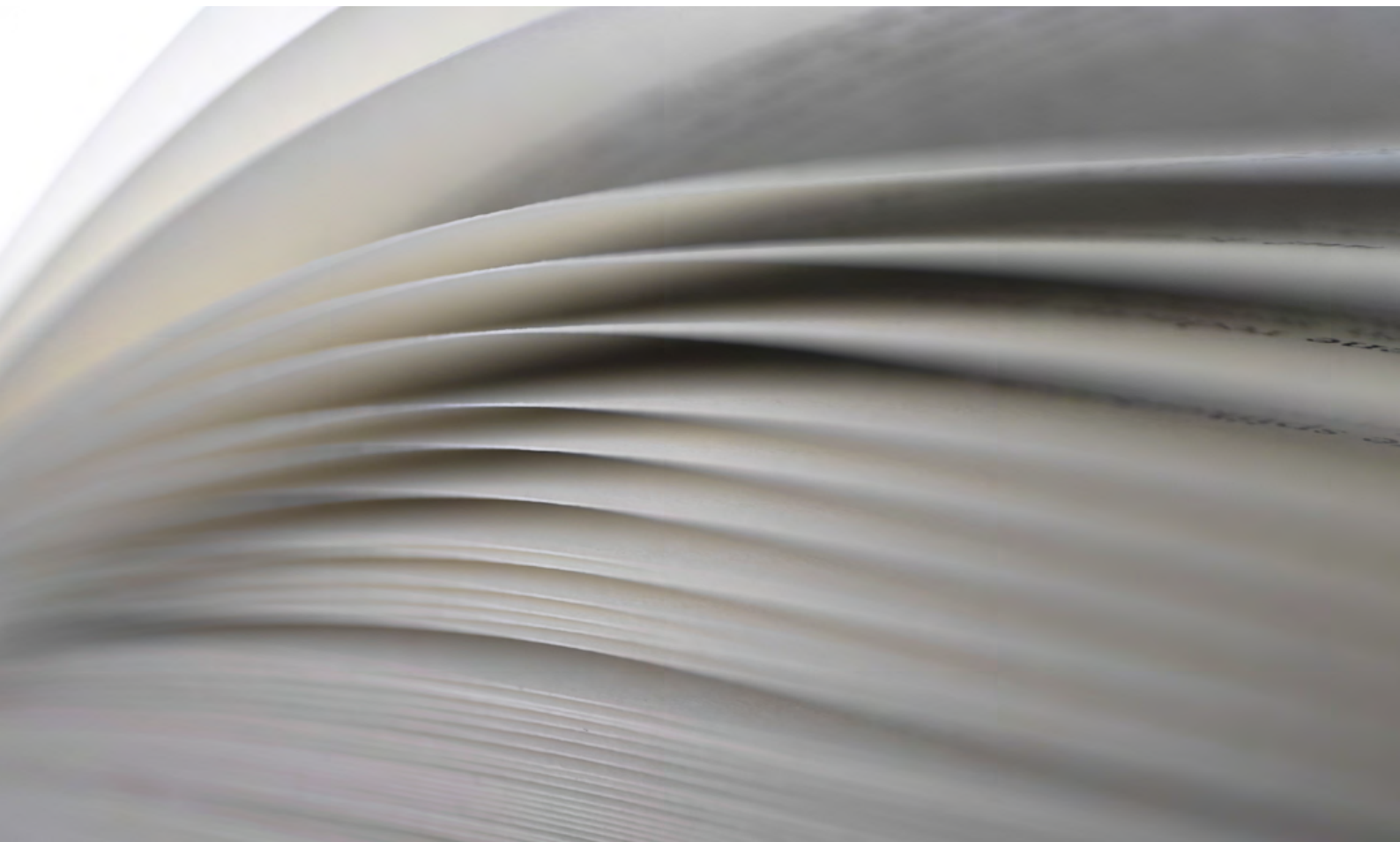
The content of an NDA depends on the nature of the information being disclosed, the relationship between the parties and the purpose of sharing the information. On that basis, an NDA cannot really be 'general' or 'standard form' as it should meet the needs and requirements of the specific circumstances.

The precedent NDA provided in this Start-up Pack is intended for use at the early stages of a start-up business to be used when

deciding whether to collaborate with another start-up entity. This NDA is not intended to cover collaboration going forward and if the relationship does develop you should obtain advice on the form of collaboration arrangements to manage the relationship and confidentiality going forward.

The NDA includes mutual promises to keep information confidential and provides obligations of confidence for both parties covering information disclosed by you and your 'Representatives' and also provides the requirements for the end of the relationship including the return and destruction of confidential information.

It is important that an NDA is suitable for the specific circumstances and you should seek legal advice if you are unsure whether this particular NDA is applicable or if you have any queries on specific provisions.



Where confidential information is particularly valuable it is advisable to make it clear that it is covered by an NDA. For evidential purposes, you may wish to state that any information provided is being provided subject to any NDA that has been signed (in addition to marking it confidential). Alternatively, you could list any key confidential documents in the NDA itself (e.g. as a new sub-paragraph (d) in the definition of 'Confidential Information').

Where information has been provided prior to signing an NDA, you may wish to send a follow up email to the other party identifying the confidential information provided and confirm that it is covered by any NDA that has been signed.

A precedent NDA has been provided in this Start-up Pack.



The Employment Contract

All start-ups that begin to grow will need to take on employees for reasons of capacity and to deal with matters outside of the founder's skill set. It is a legal requirement in New Zealand to have a written employment agreement with each employee.

A precedent Employment contract has been provided in this Start-up Pack.



The essential terms of the Employment Contract include role, the date when the employment began and the nature of its term, salary and other benefits, standard hours of work and job location.

For start-ups in the technology and life sciences sectors in particular,

it will be vital that the Employment Contract includes provisions covering confidentiality and ownership of intellectual property. It is customary that all intellectual property created by any employee during his or her employment must remain the sole property of the company. Post-termination restrictive covenants also should be included in order to best protect the company's interests, staff and client base.

Terms of Website Use

Companies ought to ensure that they set out clear terms of use on which consumers can use their website. This may include placing limitations on access rights of consumers and setting out clearly what will constitute prohibited use and unauthorised uploading of material. The company will also wish to limit its own liability, ensure that intellectual property is protected and set out terms upon which access rights will be revoked.

An example of a document which sets out terms of website use has been provided in this Start-up Pack.



Companies also ought to ensure that if they are collecting any personal information from consumers on their website (or elsewhere) that they do so in accordance with the Privacy Act 2020. A privacy policy explains:

- what personal information the company may collect about the consumer;
- the purpose for which the company is collecting the personal information;
- how the company uses and stores personal information it collects about the consumer;

- when the company may use the consumer's personal information to contact them;
- whether the company will disclose the consumer's personal information to any third parties;
- the customer's choices regarding the personal information it provides to the company;
- the customer's rights of access to and correction of personal information;
- whether the company discloses the consumer's personal information to overseas recipients; and
- the use of cookies on the company's website and how the consumer can exercise its choices in relation to those cookies.

An example of a document which sets out a privacy policy has been provided in this Start-up Pack.



Legal checklists and further guidance notes

We have prepared additional guidance notes and legal checklists designed to cover some of the key issues that are likely to be relevant to a start-up business at this stage of their development. These include:

- a step by step guide to setting up a limited company in New Zealand;
- an intellectual property, sales and marketing checklist;
- a tax checklist; and
- a guide to New Zealand regulatory framework for raising equity finance.

Further information on the legal checklists and guidance notes can be found here.



Glossary of useful Venture Capital and Company Terms



ANGEL GROUPS

Organisations, funds and networks made up of high net-worth individuals formed for the specific purpose of facilitating angel investments in start-up companies.

ANTI-DILUTION PROVISIONS

Mechanisms by which certain shareholders' economic ownership in the company may be protected from being diluted (upon the issuance of additional shares) without the shareholders' having to make a material new investment.

BOARD

The board of directors of the company.

BROKERS

Individuals or firms retained by early-stage companies to raise funds for a finder's fee.

BUSINESS DAY

commonly refers to any day (other than a Saturday, Sunday or public holiday) on which banks are open for normal banking business.

CALL

A type of option (but not an obligation) for a purchaser to acquire a specified number of shares from a seller at a specified price and exercisable during a specified period, or upon the occurrence of specified events.

CAP TABLE

A table describing the capitalisation of a company including the names and number of shares owned by each principal/founder and investors and any other obligations to issues shares, such as convertible debt, warrants or employee options. This table is often segmented to describe each of several funding rounds in the company and clearly differentiates between holders of different classes of shares.

CHANGE OF CONTROL

This typically means (i) an acquisition of a company by means of a merger, consolidation, share exchange or other transaction or series of related transactions resulting in a change in ownership of the issued shares of the

company's share capital such that the shareholders of the company prior to such a transaction do not own, directly or indirectly, at least 50% of the voting power of the surviving entity in the same proportions, relative to other shareholders, as they did prior to such transaction; or (ii) the disposition by sale, license or otherwise of all or substantially all of the assets of the company.

CONFIDENTIAL INFORMATION

The definition varies from one agreement to another (see how this is defined in the Non-Disclosure Agreement) but will commonly include all information that is only known to a certain group of individuals or a company and is not known to the public. Information could include details on transactions, customers, employees and other sensitive matters.

CONSTITUTION

The main constitutional document of every company which governs the company's internal matters. See page 17 for more information.

CONVERSION RIGHTS

Rights by which preference shares 'convert' into ordinary shares at a pre-agreed conversion ratio (e.g. one preference share converts into one ordinary share). Usually a holder of preference shares has this right at any time after acquiring such shares. The company may want rights to force a conversion upon an IPO, upon the hitting of certain sales or earnings' targets, or upon a majority or supermajority vote of the preference shareholders.

CONVERTIBLE LOAN NOTE

An instrument by which investors provide loans to companies which provide the option upon certain agreed terms or events to 'convert' the outstanding loan into shares in the company.

CO-SALE PROVISIONS OR TAG RIGHTS

Gives investors the right to sell their shares in the same proportions and for the same terms as the founders, managers, or other investors, should any of those parties receive an offer for some or all of their

shares which they wish to accept. Most often sought by investors who will hold a relatively small portion of a company compared to such founders, managers or other investors.

DEED OF ADHERENCE

A document which a new shareholder will typically be required to enter into if there is an existing shareholders' agreement in order to assume the same rights and responsibilities of the other shareholders in the company.

DILUTION

The reduction in percentage ownership of the company that shareholders suffer due to the issuance of additional shares, e.g. by subsequent funding rounds.

DIRECTOR

Means any of the directors serving on the board of directors of the company.

DIVIDENDS

Profits available for distribution and paid by the company to its shareholders as a return on an

original investment. Generally, they are paid at the election of the company (and subject to any legal restrictions on doing so). Dividends are not often paid until much later in the business life cycle as start-ups are very rarely lawfully able to pay them.

DUE DILIGENCE

Process of validating a potential investment. Usually involves the study of six areas of a company's business: market structure, competition and strategy; technology assessment; management team; operating plan; financial review; and legal review.

ELIGIBLE INVESTOR

An investor with the business background and investment experience to be able to obtain the information needed to make reasonable investment decisions about the company in question. In the context of start-up financing, for legal purposes whether someone qualifies as an 'Eligible investor' will be determined by reference to certain statutory tests.



EQUITY

Ownership interest in a company, usually in the form of shares or share options.

EVENT OF DEFAULT

A specific event, such as failure to pay an amount due under a loan, which will give a party (usually lenders) specific rights, such as the ability to demand full payment of outstanding debts or the ability to enforce any security the lender may have.

EXIT STRATEGY

An agreed strategy for shareholders to see a return on the shares they have purchased. This will normally take the form of a floatation or a sale of the company. Likely to be at a developed stage of the business life cycle.

FIRST REFUSAL RIGHTS

A negotiated obligation of the company or existing investors to offer shares to the company

or other existing investors at fair market value or a previously negotiated price, prior to selling shares to new investors.

FMV (FAIR MARKET VALUE)

An acceptable selling price to an independent third party. What a willing buyer would pay a willing seller on a transaction negotiated at arm's length.

FOUNDER

A person who founded a company and was an initial subscriber for shares in the company.

INCORPORATION

The act of registering a company (see the guide to incorporation on page 16 of this Start-up Pack).

INFORMATION RIGHTS

Rights granting access to the company's information, i.e., inspecting the company books and receiving financial statements, budgets and executive summaries.

INTELLECTUAL PROPERTY

Right or non-physical resource that is presumed to represent an advantage to the firm's position in the marketplace, including patents, trademarks, trade secrets, copyrights and licenses.

INTERMEDIARY (FINANCIAL INTERMEDIARY)

An individual or institution which typically assists persons or entities in making investment decisions.

IPO (INITIAL PUBLIC OFFERING)

The regulated process by which a private company registers its shares for trading in public markets ('going public').

INVESTMENT BANKERS

Representatives of financial institutions engaged in the issue of new securities, including management and underwriting of issues as well as securities trading and distribution.



INVESTOR

The common term for a person or company other than a Founder or Employee that purchases shares in a company.

ISSUED SHARE CAPITAL

The amount of shares of a company that have been issued and are held by shareholders.

KEY PERSON

The term given to specific employees within a company whose value has been identified as being material to the company. Key Person are often the subject of specific company insurance policies and more sophisticated service contract terms.

LEVERAGE BUYOUT

Acquisition of a company, using a mixture of borrowed funds and equity. Typically, the target company assets serve as security for the loans taken out by the acquiring firm, which repays the loan out of the cash flow of the acquired company.

LICENSED INTELLECTUAL PROPERTY

Means any Intellectual Property licensed to the company by a third party.

LP - LIMITED PARTNERSHIP

A partnership formed by two or more persons for the purposes of carrying on a business in common with a view of profit. It must have at least one general partner (who often has responsibility for managing the business of an LP) and a limited partner (who is required to contribute capital to the LP). In most cases, taxed in a similar way to a normal partnership, i.e. the LP is not subject to tax, just the members.

MERGERS AND ACQUISITIONS (M&A)

Transactions as part of corporate strategies involving the buying, selling, merging and dividing of companies.

NON-DISCLOSURE AGREEMENT (NDA)

An agreement which precludes disclosure to third parties of private information revealed by one party to another, usually for a fixed term.

ORDINARY SHARES

These are the most common form of share for a start-up company. In the case of a liquidation of the company, holders are generally entitled to all assets and cash of the company after the payment of obligations such as bank debt, corporate debt, taxes, trade creditors, employee obligations, and preference shares (if applicable). Founders and employees almost always own shares or options for ordinary shares.

OWNED INTELLECTUAL PROPERTY

means any Intellectual Property owned or developed by the Company.

POST-MONEY VALUATION

Valuation of a company immediately after a new round of investment, that is, the pre-money valuation plus the total consideration of the new round of investment.

PRE-EMPTIVE RIGHTS

The right of a shareholder to provide financing/purchase additional shares in the company on the same terms as offered to other parties up to the amount necessary to maintain such holders pro-rata ownership percentage in the company.

PRE-MONEY VALUATION

Valuation of a company agreed upon by the existing owners and the new investors, immediately prior to a new round of investment.

PREFERENCE SHARES

Most likely class of share for angel or venture capital equity investments. Preference shares rank in priority to ordinary shares but are subordinate to debt. The rights attaching to the preference shares will be detailed in the constitution of the company. This will often require the adoption of bespoke constitution. The likely rights attaching to preference shares include voting, dividend, management, conversion and other rights and preferences over and above the rights attaching to ordinary shares.

PRIVATE PLACEMENT

The sale of shares, bonds or other investments not to the public, sometimes directly to institutional or Worldwide investors. A private placement does not require the production of a detailed product disclosure statement, as a public offering does.

PUT

An investor's right to force company to purchase his/her shares. Used by investors to assure eventual liquidation of their investment. Opposite of a 'Call.'

REDEMPTION RIGHTS

Rights to force the company to purchase shares ('put') and more infrequently the company's right to force an investor to sell their shares to the company ('call').

SEED FINANCING

The initial capital used to start a business. Seed capital often comes from the personal assets of the

founders of the company and/or from friends and family. Different stages of seed financing are:

Series A – first round of investment

Series B – second round of investment

Series C – third round of investment

START-UP FINANCING

Provided to companies completing product development and for early marketing. Companies may be in the process of organising or may already be in business, but usually have not sold their product commercially.

SHARE OPTION

Grants the right to purchase securities (usually ordinary shares) at a stated exercise price over some future period of time.

SUBORDINATED DEBT

Debt instrument 'subordinated' to amounts lent by institutions such as banks. This type of debt generally does not limit the company's borrowing power with banks.

SUBSCRIBE

An application to purchase shares in the company which have not previously been issued to anyone else.

SUBSCRIPTION PRICE

Means the aggregate price paid to purchase new shares in a company.

TERMINATION EVENT

Means any one of the events listed in an agreement, which shall terminate the agreement immediately.

TERM SHEET

A preliminary document that often includes the key terms of an investment in a company including agreed-upon valuation of the business, including the proposed capitalisation table; key financial and legal terms; rights of both parties.

VENTURE CAPITALIST

A financial institution specialising in the provision of equity and other forms of long-term capital to

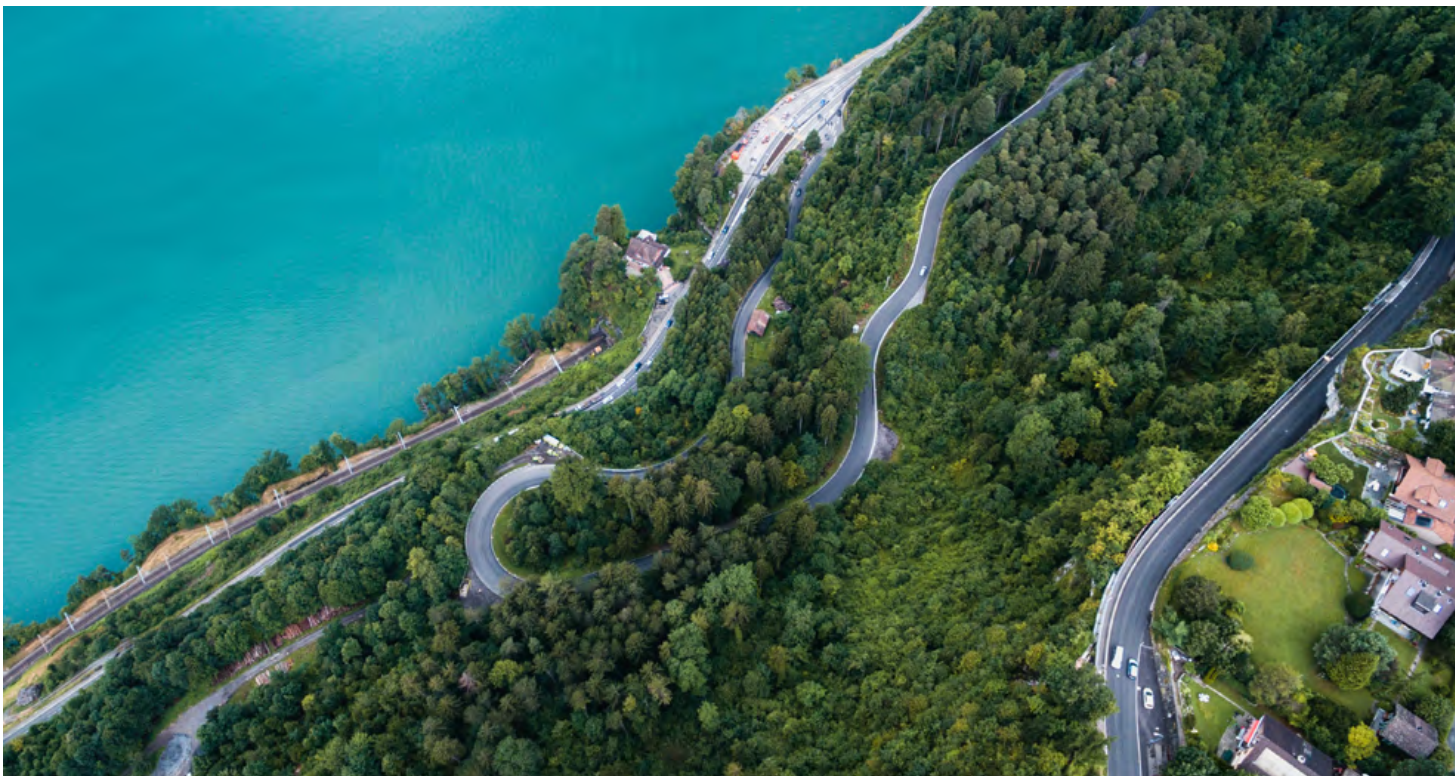
enterprises, usually to firms with a limited track record but with the expectation of substantial growth. The venture capitalist may provide both funding and varying degrees of managerial and technical expertise.

WARRANTS

Securities that give holders the right, but not the obligation, to buy shares at a price for a given period of time. Similar to share options (for non-employees) and often offered to investors as a bonus for cash investment or to service providers in exchange for fees.

WARRANTY/WARRANTIES

Specific statements in relation to the company given by the directors of the company (or the sellers) to Investors purchasing shares in the company to give a level of comfort to the purchasers about the state of the company in which they are investing.





A Step-By-Step Guide to Setting up a Company in New Zealand

When setting up and starting a business, there are a number of different legal structures available. Whilst the most common entity used by start-ups is a limited liability company, this may not be appropriate for all businesses. If you are any doubt, please seek legal and/or tax advice.

This guide provides simple instructions on setting up a limited liability company using the online service on the New Zealand Companies Office website. An alternative would be to instruct a lawyer to incorporate a company on your behalf (which is a more costly option).

This guide also explains the basic steps to be taken to check the availability of company names and to incorporate a company online.

It is worthwhile to note that whilst setting up a limited liability company has a number of advantages, it is a formal process and requires on-going compliance

requirements (which include annual and event driven filings).

Further details of the on-going obligations can be found on the [Companies Office website](#).

How to check whether your preferred company name is available to register

Consideration should be given at the outset to the company name and likely branding for the business.

It should be noted that registration of a company name will not give trademark protection and separate trademark searches will need to be undertaken.

Please see our Intellectual Property Checklist provided in this Start-up Pack for further information.

Initial check of company name

1. Go to the Companies Office website and click on the 'Companies Register' button.
2. Click on 'Registering a Company' then 'How to reserve a company name'. Scroll down and click on 'ONECheck'.
3. Type in the desired company name to see whether the name is available as a company name, domain name and trade mark.

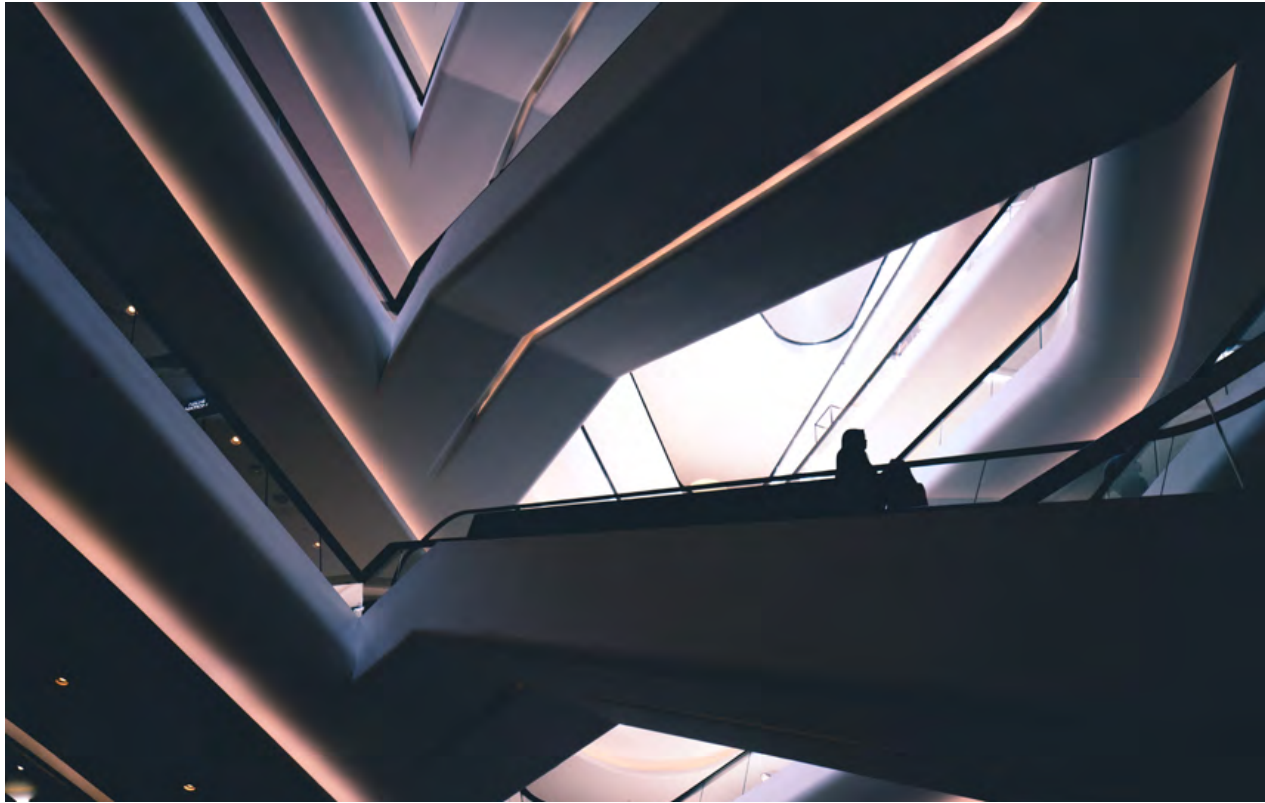
Reserving a company name on the Companies Office website

1. Go to the Companies Office website and click on the 'Companies Register' button.
 2. Click on 'Registering a company'.
 3. Click on 'Create your account now'. This will require you to create a RealMe login and an online services account with the Companies Register. Of the three types of online services account, you will likely select the service which allows you to manage your account as an individual (as opposed to an employee of a company).
 4. Once you are logged-in go back to the Companies Register home page and click on 'Registering a Company' and then 'Reserve a name now'.
 5. Complete the online form and submit it. For the entity type, select 'NZ Limited Company'. Reserving a name costs \$10 (plus GST). Please note your name reservation must be submitted, paid for and approved by the Companies Office before you can continue with your company incorporation.
 6. To begin your online application for incorporation, either select the link in the email the Companies Office sent you (when your company name reservation was approved), or log in to your account, select 'My Unfinished business' – 'My tasks' – find the 'Complete Coy Application task'.
7. Progress through each screen. This requires the following information:
 - a. The name of the proposed company;
 - b. The full legal name, date of birth, place (town/city and country) of birth and residential address for each director. For directors living in Australia, if they are a director of an Australian company you will also need the name of, ACN number and registered office address for the Australian company.
 - c. The full legal name and address of each shareholder.
 - d. A New Zealand registered office, address for service and address for communication (including email address).
 - e. The number of shares to be issued to each shareholder.
 - f. The Company's proposed balance date (the default balance date for companies will be 31 March which is also the tax year end) and preferred annual return filing month (February – November).
 - g. Constitution (optional, but advised). An example of a constitution has been provided in this Start-up Pack.
 - h. Select how you want to pay your application fee of \$114.39 (plus GST).
 8. Once you have submitted your online application for incorporation with the Companies Office, the Companies Office will email you the directors' and shareholders' consent forms. Each director and shareholder must sign and return their form to the Companies Office within 20 working days to avoid having their registration cancelled.
 9. The Companies Office may request additional information/ documentation surrounding directors or shareholders prior to allowing the registration to take place. This additional information may include:
 - a. Certified original consent forms.
 - b. Proof of identity (certified copies of the passport or other identity information).
 - c. Proof of residency (certified copy of utilities account or bank statements).
 10. Once the Companies Office receives all directors' and shareholders' consent forms, the application will be complete.
 11. Once approved, you will receive your Certificate of Incorporation and your company details become publicly available on the Companies Register.

Congratulations, you will now have a limited company which has a separate legal personality from its shareholders. This company should now be used to enter into contracts, open bank accounts etc.

Constitution

There are two key documents that contain the governance and mechanics of a company, the first being the constitution (**Constitution**) and the other being the subscription and shareholders' agreement.



The Constitution is a public document (so please include any commercially sensitive information in the subscription and shareholder's agreement) and includes specific details in relation to share and income rights, leaver provisions and exit provisions (see 'key terms' section below).

The Constitution has been prepared on the basis of start-ups receiving seed financing from friends and family and/or other private investors and assumes that there will be one class of shares only (ordinary shares). As the Constitution does not contain references to preferences shares or multiple classes of ordinary shares, they will not be suitable for later stage investment.

You should be comfortable that the Constitution is suitable for the circumstances in which you are seeking to use it, and seek legal advice to ensure it is suitable for your circumstances or if you are unclear of the meaning of any of the particular provisions.

Download a precedent of the Constitution here →

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Overview of Key Terms

Share Capital

The Constitution assume that shareholders will hold the same class of ordinary shares and each ordinary share entitles the holder to the same rights (both in terms of voting and in terms of income and distributions). If a shareholder is to receive different or preferential treatment, the Constitution may not be suitable and specific legal advice should be sought.

Transfer Restrictions

It is important for a high growth company to manage its shareholder base properly. One way for it to do so is to include restrictions on the transfer of ordinary shares to third parties.

The Constitution provides that ordinary shares can only be transferred in the following circumstances:

- a. to a permitted transferee (being in the case of an individual a family member of family trust or in the case of a corporate entity to a member of its group);
- b. in accordance with the pre-emption provisions. Any shareholder who wishes to transfer any shares will be required to offer those shares to the other shareholders of the company in the first instance for an agreed price.

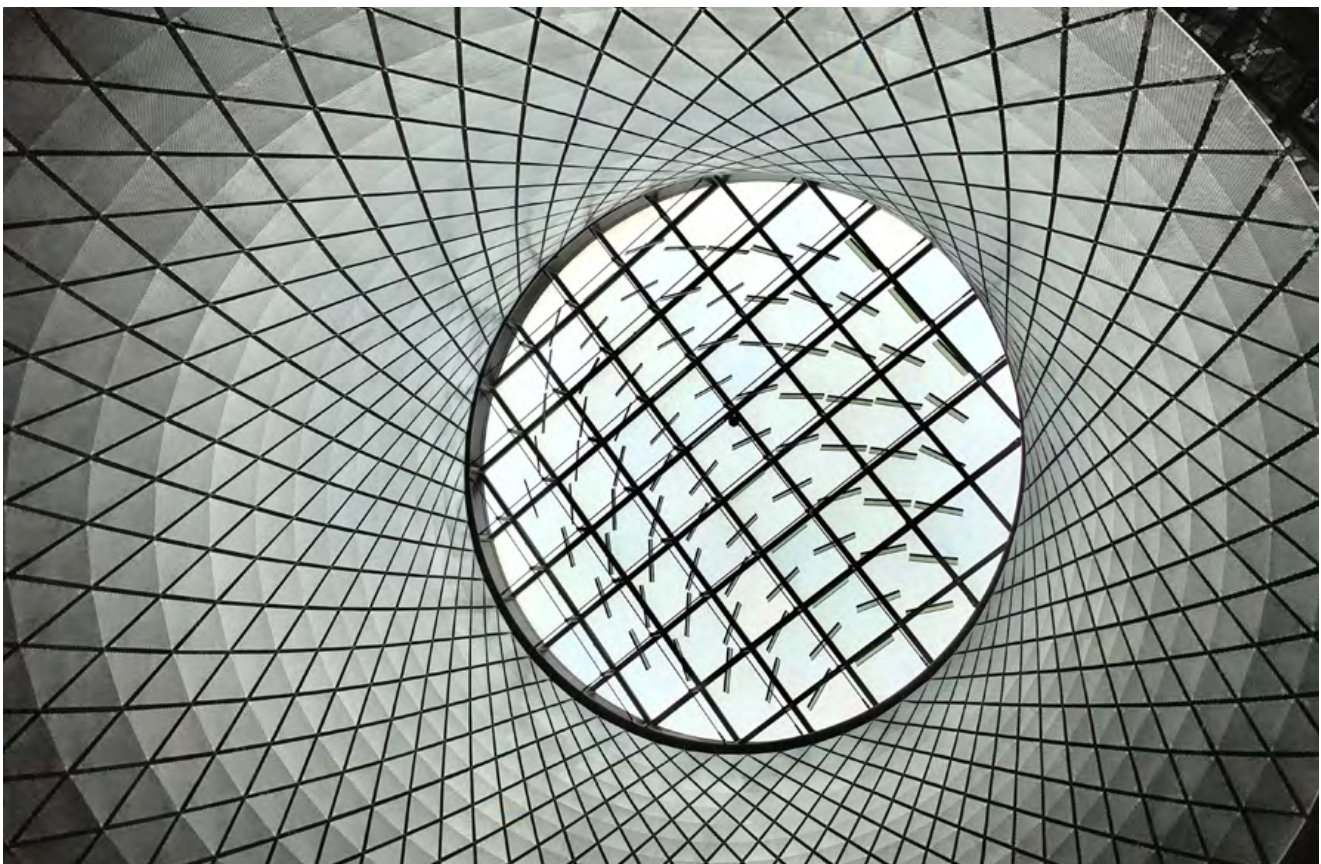
Leaver Provisions

The Constitution include specific provisions in relation to employees holding equity in the Company. Please note that these provisions would **only** apply to a founder owner if that founder has signed an employment contract (or a consultancy agreement) with the company.

If an employee ceases to be employed by the company, such employee will be deemed to have offered some or all of his shares for sale.

If an employee leaves the business, he or she will either be a '**Good Leaver**', a '**Bad Leaver**' or an '**Early Leaver**'. The different types of Leaver and the consequences of being such a Leaver are set out below.

The fair market value means the price agreed between the leaver and the company or failing agreement as determined by a third party valuer (in accordance with a procedure set out in the Constitution).



TYPE OF LEAVER	CIRCUMSTANCES OF LEAVING	CONSEQUENCES OF LEAVING
GOOD LEAVER	<p>An employee who ceases to be employed by the company by reason of any of the following circumstances:</p> <ul style="list-style-type: none"> a) death b) permanent disability or ill health which results in the employee becoming permanently unable to work; c) resignation solely as a result of limb (b) above occurring to such employee spouse or child; d) being made redundant; or e) retirement. 	<p>Employee required to transfer all shares held by him or her for the fair market value.</p> <p>The Board (with the approval of an Investor Majority) have the right to allow an employee to retain all or part of his or her shares.</p>
BAD LEAVER	<p>An employee who ceases to be employed by the company and who is not a Good Leaver or an Early Leaver. This would capture most employees who leave the business.</p>	<p>Employee required to transfer all shares held by him or her for \$1.00.</p> <p>The Board (with the approval of an Investor Majority) have the right to allow an employee to retain all or part of his or her shares.</p>
EARLY LEAVER	<p>An employee who ceases to be employed by the company within a specified period (such as the second anniversary of the investment date) by reason of any of the circumstances listed in limbs (a) to (e) of the definition of Good Leaver above.</p>	<p>If an employee leaves prior to the end of the specified period (such as the fourth anniversary of his date of employment), his shares will be subject to vesting (calculated by dividing the number of months elapsed by the vesting period).</p> <p>Employee required to transfer the Vested Shares for fair market value and the Unvested Shares for \$1.00.</p> <p>The Board (with the approval of an Investor Majority) have the right to allow an employee to retain all or part of his or her shares.</p>

Tag and Drag

Drag Right: If holders of more than 75 per cent of the ordinary shares (or such other percentage you include in the Constitution) wish to transfer all of their ordinary shares to a third party purchaser, they will have the right to require all other shareholders to sell their

ordinary shares to that third party purchaser on the same terms. This means that a minority shareholder will be unable to block a sale of the company.

Tag Right: If shareholders propose selling more than 50 per cent of the share capital of the company

to a third party purchaser, all shareholders will be given the right to sell to that purchaser on the same terms.

This means that a minority shareholder will have a right to sell his or her stake in the business at the same time as the majority.

INSTRUCTIONS FOR COMPLETING THE CONSTITUTION

1. Read the disclaimer on the front page of the Constitution in full.
2. Complete the details indicated in square brackets and ensure that all square brackets are deleted. Where alternatives are provided, delete the options that are not required.
3. **Review the agreement to make sure you are comfortable with its content, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
4. Arrange for the special resolution to be signed and dated by shareholders holding at least 75 per cent of the share capital of the Company. Once signed and dated, the new Constitution will need to be uploaded to the Companies Office website.
5. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.



Subscription and Shareholders' Agreement



With respect to the governance of a company, one of the most important documents is the subscription and shareholders' agreement (**SSHA**) (the other being the Constitution).

The SSHA is a private and confidential document that records the commercial terms of the arrangement between the parties and will include specific details of any proposed subscription for shares and any other key terms of the investment.

The SSHA has been prepared on the basis of start-ups receiving seed financing from friends and family and/or other private investors. It can also be adapted for use with multiple investors. The SSHA has two main purposes: a) to provide the legal mechanism for an investor to subscribe for shares in the company (typically including details on price, conditions and number of shares); and b) to define the rights and obligations of the shareholders and to govern their relationship between one another.

The SSHA will need to reflect the commercial agreement between the founders and/or any investors and it

is important for the correct balance to be achieved.

Founders should give detailed consideration to how much equity to give away to investors as this may have a significant impact at the time further investment is sought. In practice, founders are likely to want to retain as much equity in the company as possible.

You should be comfortable that this SSHA is suitable for the circumstances in which you are seeking to use it, and seek legal advice to ensure it is suitable for your circumstances or if you are unclear of the meaning of any of the particular provisions.

Download a precedent of the SSHA here →

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business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this Start-up Pack, we recommend that you seek legal advice before taking any further action.

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Overview of Key Terms

Warranties

Warranties are contractual statements commonly given by the company and the founders of the company (the warrantors) to investors to provide comfort to the investors regarding the condition of the company. The investors are likely to also obtain comfort by undertaking their own financial and legal research ('due diligence') into the company and its business.

The warranties serve two main purposes: (i) to elicit information from the warrantors of any known problems; and (ii) to potentially provide the investor with a remedy if a statement made about the company later proves to be incorrect. Any known problems should be specified in as much detail as possible in schedule 4 of the SSHA.

Please see point 5 of the instructions on page 23 for further guidance.

The warranties in the SSHA are given by the warrantors jointly and severally, meaning that the investors can choose to bring a claim against any one or more of the warrantors for any loss arising from a breach of warranty.

In addition, a number of the warranties are qualified by the awareness of the warrantors, meaning that the warrantors are only liable for a breach of warranty if they (or any of the other warrantors) were aware of the particular matter or circumstance that gave rise to a breach of warranty at the time the SSHA was signed.

All warranties are subject to financial and time limits on claims.

In the light of all of the above points, before entering into the SSHA, founders should be completely comfortable with their co-founders. Given the importance of the warranties, the founders (and any key employees) may wish to discuss the warranties (and any known problems) together in detail.

Restrictive Covenant

Detailed consideration should be given to the scope of the restrictive covenant. To be enforceable, the covenants should be reasonable as to geographical area, the length of time the restrictions are expressed to apply and the type of business covered. If they extend beyond what is reasonably necessary to protect the legitimate interests of the company, they may be struck down by the courts as being void or unenforceable. What is reasonable will, of course, depend on the circumstances in each particular case.

Majority Investor Consent

Clause 7 of the SSHA includes a list of items that require the consent of those shareholders holding at least 75 per cent. of the share capital of the company held by the investors. These are designed to protect the investors' financial investment in the company.

Any new shares issued by the company for cash will need to be offered to the existing shareholders in proportion to their existing holdings before they are offered to new investors.

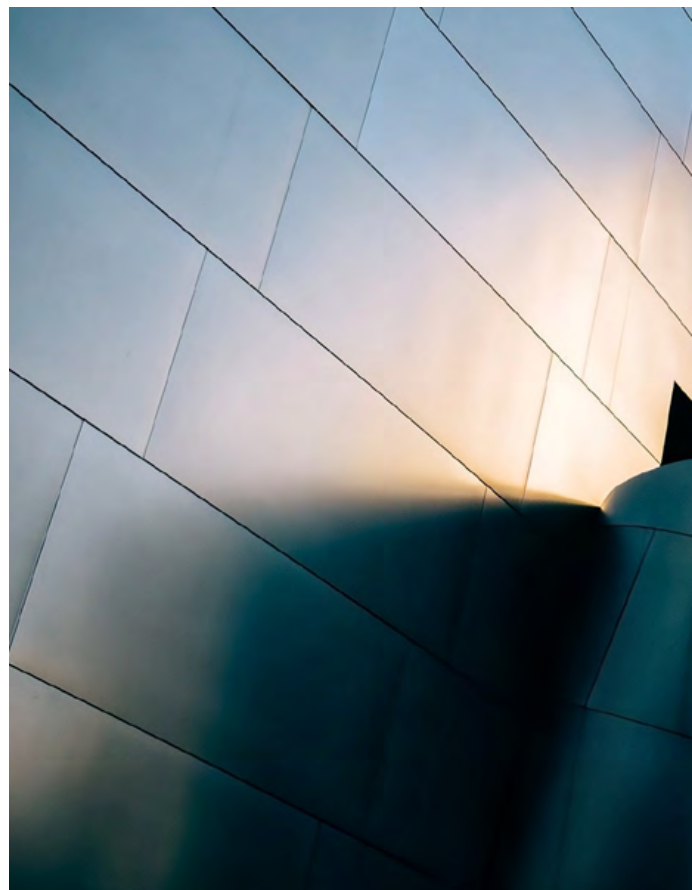
Other

In addition, the investors have the right to receive certain financial information in relation to the company. The founders and the

company should be wary of the nature and extent of information (financial or otherwise) provided to any new investors from time to time.

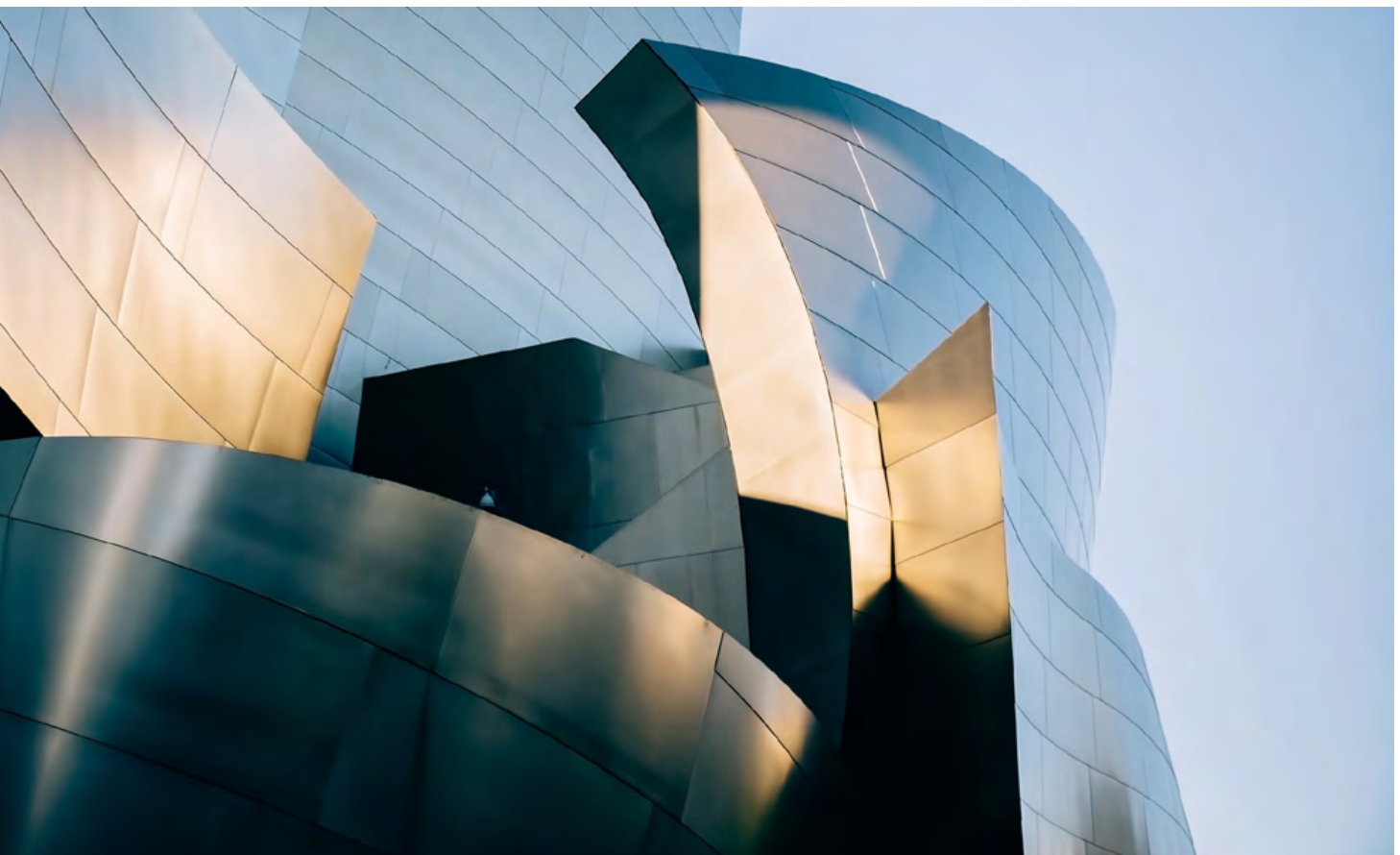
Once the SSHA has been entered into, most information provided by the company to the investor(s) will be covered by the confidentiality obligations contained in clause 12.

The founders and the company should always take steps to ensure that any information provided to the investor(s) is correct, as it is important to protect the relationship with the investor(s) and to ensure that no legal liability arises.



INSTRUCTIONS FOR COMPLETING THE SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT

1. Read the disclaimer on the front page of the SSHA in full.
2. Complete the details indicated in square brackets and ensure that all square brackets are deleted. Where alternatives are provided, delete the options that are not required.
3. **Schedule 1** – Enter full details of the Founders and the Investors.
4. **Schedule 2** – Insert the company details. Much of this information can be obtained on the Companies Office.
5. **Schedule 4** – The purpose of schedule 4 is to provide the founders the opportunity to disclose to the investors any matters which qualify or contradict the warranties contained in schedule 3 of the SSHA. Please carefully read through each warranty individually and consider whether there is anything you are aware of which does (or may) qualify and/or contradict the warranty in some way. Any disclosure contained in schedule 4 is required to include sufficient explanation and detail to enable the investors to identify the nature, scope and full implications of any matter disclosed.
6. **Schedule 7** – The deed of adherence is only required at the time shares are being transferred to a new shareholder. That new shareholder will need to sign the deed of adherence to adhere to the terms and conditions of the SSHA.
7. **Review the agreement to make sure you are comfortable with its content, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
8. The founders will need to satisfy themselves that the subscription monies will be forthcoming/are available.
9. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.



Intellectual Property Assignment



Intellectual Property (**IP**) is often one of the most important parts of a technology or life science company's business, if not the most important. You should take care when entering into any agreement relating to sharing or using IP, whether it is yours or a third party's, to ensure that the agreement you are entering into has the effect you think it has.

An assignment of intellectual property transfers the ownership of the IP specified in the agreement from one person to the other. This document is a simple assignment that can be used to transfer the ownership of IP rights belonging to an individual, such as rights created by an employee before they became your employee, a director or shareholder of your company or a consultant you have engaged to your company. As a result, the individual loses his or her rights to the IP assigned. If the individual is to retain ownership of the IP, or is to retain some limited rights to use it, this assignment is not suitable.

Note: this assignment should only be used in straightforward circumstances to transfer existing IP, where the IP is easy to identify and define. Make sure the IP is described in sufficient detail to clearly identify what is being

assigned. If the IP is not correctly described in the agreement, the assignment may not be effective or may not transfer the IP that you think it transfers. If you are in any doubt, seek legal advice.

WARNING: It is important to make sure that this assignment is not inconsistent with the terms of any other agreement the individual has with you. If the IP being transferred is particularly important, valuable, difficult to define or if there is any additional complexity you should seek legal advice to ensure it is properly transferred.

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up Pack, we recommend that you seek legal advice before taking any further action.

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Download a precedent IP Assignment here →

INSTRUCTIONS FOR COMPLETING THE DOCUMENT

1. Read the disclaimer on the front page of the agreement in full.
2. Complete the details indicated in square brackets and ensure that all square brackets and italicised text are deleted. Where alternatives are provided, delete the options that are not required.
3. **Review the agreement to make sure you are comfortable with its terms, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
4. **Schedule 1** – Enter the details of the IP being assigned. Ensure that this is entered correctly and in as much detail as possible so that it is clear what is being transferred. Include registration numbers for any registered rights. Include pictures or annex copies of documents where this assists in identifying the rights transferred.
5. **Schedule 2** – Insert details of any licences, previous assignments, security interests, options, mortgages, charges or liens relating to any of the 'Intellectual Property' (as defined). **However, if any do exist, we strongly recommend that legal advice is taken as to the effect of these on the Intellectual Property and this Assignment.**
6. The IP Assignment document will need to be signed and dated by all parties in accordance with New Zealand law. If you are in any doubt as to the formalities for signing the document, please seek legal advice.
7. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.



After completion

For registered rights, it is important that the assignment is recorded at the relevant registry. This ensures that third parties are put on notice of your rights. If the assignment is not recorded, a third party could gain rights in the IP in the interim.

The costs and formalities for registration vary depending on the registry and relevant right. Contact the relevant registry for further information, and take legal advice on this if you are unsure what to do.

Further Guidance

We have also included an intellectual property checklist, which you may find of assistance. →

Non-disclosure agreement



Before sharing any sensitive information with a third party, you should ensure that you have an appropriate non-disclosure agreement (**NDA**) in place.

The form of NDA you need, including the safeguards you put in place to protect your confidential information, will depend on the nature of the information you are sharing, who you are sharing it with and the purpose for which you are sharing it.

This NDA is designed to be used in the early stages of a start-up when you are sharing information with another start up in order to decide whether or not you wish to collaborate with each other.

This NDA is not designed to cover the collaboration going forward, should you decide to enter into one. If you decide to collaborate with the other party, you should obtain advice on the form of collaboration arrangements you should put in place to manage your relationship going forward.

These arrangements should contain appropriate confidentiality provisions in place of this NDA. This NDA is a mutual NDA, which

means that both you and the other person promise to keep each other's confidential information confidential. The NDA provides that the same obligations of confidence apply to both parties. The NDA protects confidential information disclosed by you or one of your 'Representatives' (as defined) to the other party or one of its Representatives. The NDA provides that at the end of the agreement, or at your request, the other party will return or destroy all confidential information disclosed.

You should be comfortable that this NDA is suitable for the circumstances in which you are seeking to use it, and seek legal advice if you are not sure if it is suitable for your circumstances or if you are unclear of the meaning of any of the particular provisions.

This NDA is not intended to be used for potential investors. It is not possible to provide comprehensive advice on the matters that may apply in the

particular circumstances of your business in this Start-up Pack. This Start-up Pack is also by no means exhaustive. If you have any queries or concerns in relation to this Start-up Pack, we recommend that you seek legal advice before taking any further action.

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Download a precedent NDA here →

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2. Complete the details indicated in square brackets and ensure that all square brackets are deleted. Where alternatives are provided, delete the options that are not required.
3. **Review the NDA to make sure you are comfortable with these terms, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
4. The NDA will need to be signed and dated by all parties in accordance with New Zealand law. If you are in any doubt as to the formalities for signing the NDA, please seek legal advice.
5. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.





A contract of employment

Formal employment agreements between companies and their employees are essential in order to provide both parties with certainty over the terms of the employment. Additionally, employers are legally required to provide employees with a written statement of certain key terms of their employment.

For a start-up at the early stages of considering expanding its workforce, it is important that they understand specific employment-related clauses and how they could impact on their business. It is usually also beneficial for companies to ensure that a consistent approach is taken to their various employment agreements in order to provide certain standards and expectations that all employees should adhere to. The agreement will need to adequately protect the company's interests whilst not being unnecessarily onerous on the employee(s), which could discourage them from joining the company.

The terms which must be provided to employees in writing include;

- names of the employer and employee
- job description
- the date when the employment began and the nature of its term
- notice periods
- salary information
- hours and place of work
- holiday and sick leave entitlements, including payments for working on a public holiday
- an employee protection provision

- disciplinary and grievance procedure information; and
- reference to any applicable collective agreements.

For technology or life sciences start-ups in particular, it will also be vital that the employment agreement includes provisions covering confidentiality and ownership of intellectual property. Both of these points have been addressed in the employment agreement provided within this pack. It may also be important for certain individuals to be subject to post-termination restrictions, to protect the company's confidential information and contacts after the employee leaves.

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Download a precedent Employment Agreement here



INSTRUCTIONS FOR COMPLETING THE DOCUMENT

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2. **Review the agreement to make sure you are comfortable with its terms, and that these are appropriate for your needs. Ideally you should seek legal advice to ensure this is the case.**
3. The Employment Agreement will need to be signed and dated by all parties in accordance with New Zealand law. **If you are in any doubt as to the formalities for signing the Employment Agreement, please seek legal advice.**
4. Keep the original document(s) or a copy of the document in a safe place and an electronic back-up of the final signed version.



Legal Checklists

IP, Sales and Marketing Checklist

The IP checklist is designed to cover some of the initial considerations that relate to IP, data protection, advertising, consumer law' and a start-up business, particularly for companies in the Technology and Life Sciences sectors.

Rather than providing comprehensive advice on everything that could apply, the checklist gives a non-exhaustive list of some potential queries and concerns that may arise in relation to IP. However, if there are any particular queries or concerns, we recommend that you seek legal advice.

The IP checklist provides a general overview of a variety of IP matters including brands and trade marks, confidentiality, patents, registered and unregistered IP, third party rights, open source and user generated content, data protection, advertising, consumer protection and websites. The checklist also includes some basic website terms and conditions and a privacy policy that can be used as a precedent.

However, as noted and as for the other documents in this Start-up Pack, we would recommend seeking legal advice on any issues where further detail or clarity are needed.

Download the IP Checklist here



Download the Website Terms and Conditions here



Download the Privacy Policy here



Tax Checklist

The tax checklist is designed to cover some of the initial considerations that relate to tax and a start-up business.

It includes the types of registrations that a business and/or individual may need to make.

Download the Tax Checklist here



Guide to the New Zealand Regulatory Framework for Raising Equity Finance

Any start-up company seeking third party investment should be mindful of any legislative restrictions on seeking investment from third party sources. In New Zealand, the issue or sale of financial products (which includes ordinary shares) is regulated under the Financial Markets Conduct Act 2013. It is likely that any offer made by a person (e.g. a founder) to one or more investors seeking investment in his/her company will be subject to the New Zealand legislation that regulates the offers of financial products to the public (a "Regulated Offer").

A Regulated Offer cannot be made by a person unless:

- a product disclosure statement (PDS) is prepared for the offer; and
- certain information relating to the financial product is lodged with an online offer register; or
- the offer falls within an exemption (see below).

Depending on the nature of the breach, a person may be liable for criminal or civil penalties for breaching disclosure obligations in relation to Regulated Offers (for example, where a false or misleading statement is included in a PDS).

Commonly used exemptions by early stage start-ups to avoid triggering the requirement to produce a PDS include:

- limiting offers of financial products to:
 - wholesale investors (which include self-certified 'eligible investors', investment businesses and people who invest a minimum amount of \$750,000);
 - close business associates or relatives; and/or
 - 'small offers' of equity securities to no more than 20 investors in a 12-month period, raising less than NZ\$2 million; and
- raising money through a licensed equity crowdfunding platform.

Download the Guide to the New Zealand Regulatory Framework here



START-UP PACK: TERMS AND CONDITIONS OF USE

1. Definitions and Interpretation

In these terms and conditions: **DLA Piper** means the global law firm known as DLA Piper, operating through various separate and distinct legal entities (including the DLA Piper Entity). Further information in respect of these entities can be found at the Legal Notices page at www.dlapiper.com;

DLA Piper Entity, we or us means DLA Piper New Zealand (and words such as 'our' shall be interpreted accordingly);

DLA Piper Group means the alliance of legal practices known as DLA Piper Group, comprising members which are separate and distinct legal entities and which are affiliated to entities of DLA Piper but are not, themselves, entities of it. Further information in respect of these members can be found at the Legal Notices page at www.dlapiper.com; and

DLA Piper Person means each and all of the following and each and all of their respective members, partners, directors, employees, representatives and agents (as the case may be):

- the DLA Piper Entity;
- any other entity of DLA Piper;
- any member of DLA Piper Group; and
- any body or entity controlled or owned by any entity of DLA Piper (including the DLA Piper Entity) or any member of DLA Piper Group or any of their respective members, partners, directors, employees, representatives or agents (as the case may be).

2. Scope and terms of the Start-up Pack

You should note that:

- 2.1 the Start-up Pack is intended as a general overview of some of the key legal issues that are likely to be relevant to a start-up business in New Zealand and does not claim to be comprehensive or provide specific legal advice or other advice. It is not possible to provide comprehensive advice, whether legal or otherwise, on the matters that may apply in the particular circumstances of your business in this Start-up Pack. Accordingly, matters that you consider to be important, or that may otherwise be considered important, to your particular circumstances or business may not have been addressed in the Start-up Pack, or may not have been addressed in sufficient detail for your purposes. Consequently, the Start-up Pack cannot act in any way as a substitute for obtaining your own legal advice and other advice; and
- 2.2 we have not updated the Start-up Pack since 1 March 2022 to take account of any subsequent events or changes in law, and we have no duty or responsibility to do so.

3. Downloading the Start-up Pack

- 3.1 By downloading and/or accessing and/or reviewing and/or using the Start-up Pack you confirm that:
 - 3.1.1 you have fully considered the provisions of these terms and conditions, have obtained such legal advice as you consider appropriate, and, consider such provisions to be reasonable; and
 - 3.1.2 you have read and understood these terms and conditions and you understand that they may affect your rights or responsibilities and you agree to be bound by these terms and conditions.

4. No reliance or claims by you/any other party

- 4.1 You acknowledge and agree that these terms and conditions are a condition to our agreement to provide you with access to the Start-up Pack and that neither we nor any DLA Piper Person:
 - 4.1.1 owes or accepts any duty, responsibility or liability to you or any other party, whether in equity, contract, tort or otherwise, in respect of the Start-up Pack or in respect of any information contained in or derived from the Start-up Pack; and
 - 4.1.2 shall be liable in respect of any direct or indirect losses (of whatever nature), costs, claims, demands, expenses (including, without limitation, legal expenses) or other liabilities incurred or suffered by you or any other party arising out of your use, or any other party's use, of the Start-up Pack, or any information contained in or derived from the Start-up Pack, or our provision of the Start-up Pack to you or any other party.
- 4.2 You agree that you will not rely on the Start-up Pack and will not bring any action, proceedings or claim against us and/or any DLA Piper Person where such action, proceedings or claim in any way relates to or concerns or is connected with your use, or the use by any other party, of the Start-up Pack or any information contained in or derived from the Start-up Pack.
- 4.3 You acknowledge and agree that by making the Start-up Pack available to you, neither we nor any DLA Piper Person is making any representation, statement, warranty or

assurance in relation to the accuracy or completeness of the Start-up Pack or any matters mentioned or information contained in it.

- 4.4 You agree to indemnify us and each DLA Piper Person and to hold us and each DLA Piper Person harmless against all actions, proceedings and claims brought or threatened against us and/or any DLA Piper Person and against all direct or indirect losses (of whatever nature), costs, claims, demands, expenses (including, without limitation, legal expenses) and other liabilities which we and/or any DLA Piper Person incur or suffer from time to time arising out of or in connection with your failure, or that of any other person to whom you provide a copy of the Start-up Pack in accordance with paragraph 5 of these terms and conditions, to comply with these terms and conditions.

5. No distribution of the Start-up Pack

- 5.1 Subject to paragraph 5.2, you must not copy or distribute the Start-up Pack or otherwise make it available to any other person.
- 5.2 A copy of the Start-up Pack may be provided by you:
 - 5.2.1 if and to the extent required by the laws of any relevant jurisdiction or by any securities exchange or regulatory or governmental body to which you are subject; and
 - 5.2.2 to any person, provided that, in each case, you take all steps necessary to ensure that the recipient understands and agrees that the Start-up Pack is provided to them subject to the same terms and conditions as those set out in these terms and conditions in relation to our provision of the Start-up Pack to you.

6. Subsequent version(s) of the Start-up Pack

You acknowledge and agree that, by making a copy of the Start-up Pack available to you, we do not assume any duty or responsibility to provide you with any subsequent versions of the Start-up Pack (if any).

7. No reliance on supplementary information or explanations

If we, in our absolute discretion, agree to give information and/or explanations to you and/or your professional advisers (to whom we assume no duty or responsibility) in relation to the Start-up Pack, you acknowledge and agree that any such information and/or explanations are given subject to the same terms and conditions as those set out in these terms and conditions in relation to the Start-up Pack.

8. No lawyer/client relationship with you

Our agreement to provide a copy of the Start-up Pack to you does not constitute or create a lawyer/client relationship between us (and/or any DLA Piper Person) and you and/or those persons to whom you make the Start-up Pack available in accordance with these terms and conditions.

9. General

- 9.1 Liability

Nothing in these terms and conditions shall be applicable to the extent that it constitutes a limitation or exclusion of liability to the extent not permitted by law.
- 9.2 Applicable law and jurisdiction

These terms and conditions and any dispute or claim arising out of or in connection with it, its subject matter or formation (including, without limitation, any non contractual dispute or claim) are governed by and shall be construed in accordance with New Zealand law, and you irrevocably agree that the courts of New Zealand shall have exclusive jurisdiction to settle any such dispute or claim.
- 9.3 Entire agreement

These terms and conditions constitute the entire agreement and understanding between us in respect of their subject matter.
- 9.4 Third party rights
 - 9.4.1 Pursuant to the Contract and Commercial Law Act 2017, each and every DLA Piper Person shall be entitled to the benefit of and to enforce the provisions of these terms and conditions.
 - 9.4.2 Except as provided in paragraph 9.4.1 above, nothing in these terms and conditions shall confer any rights or other benefits on any third parties (whether under the Contract and Commercial Law Act 2017 or otherwise).
- 9.5 Severance
 - 9.5.1 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of these terms and conditions.
 - 9.5.2 If any illegal, invalid or unenforceable provision of these terms and conditions would be legal, valid or enforceable if some part or parts of it were deleted, such provision shall apply with the minimum deletion(s) necessary to make it legal, valid or enforceable.

Get in touch

Please get in touch if you would like to discuss any of the information provided, or how we can assist in meeting your business goals.

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