High Growth Startup Pack
Emerging Growth and Venture Capital Practice
England and Wales Edition

Version 2.0

Table of contents

Welcome to the DLA Piper Startup Pack

Glossary of useful venture capital and company terms

Step-by-step guide to setting up a company in the UK

Articles of association

How to complete the articles

Subscription and shareholders' agreement

How to complete the SSHA

Intellectual property assignment

How to complete the IP assignment

Non-disclosure agreements

How to complete the NDA

A contract of employment

How to complete the employment agreement

Legal checklists

Startup pack: Terms and conditions of use

Welcome to the DLA Piper Startup Pack Version 2.0

- Welcome to the DLA Piper Startup Pack Version 2.0
- About DLA Piper
- An introduction to key legal documents for startups
- Key legal documents

Welcome to the DLA Piper Startup Pack Version 2.0

Startups and scale-ups always face a dilemma at the beginning of their corporate journey – how to ensure a solid legal framework that governs and protects the business, while ensuring legal advice is cost-effective. We have seen this many times and this is our way of helping.

This Startup Pack is intended for early stage startups and high-growth enterprises looking to get established on a solid footing. We have aimed it at companies raising their first external capital, either from family and friends, or angel and seed-level institutional investors.

Drawing on our significant experience of advising companies at all stages of their development, we aim to help companies understand some of the key legal issues likely to affect them. This information is offered open source. It can be freely shared among the startup and emerging growth community, to best help them reach their full potential and reduce using cash reserves, where possible.

This is the second version of our Startup Pack and reflects feedback from DLA Piper's Emerging Growth and Venture Capital practice, which includes lawyers with experience in intellectual property, corporate, employment, regulatory and tax matters.

The revised edition also reflects feedback from many participants in this sector, including startups, founders, incubators/accelerators, venture capitalists and other stakeholders. One key addition is a bespoke (and more sophisticated) set of Articles of Association and subscription and Shareholders' Agreement to address common issues startups may face.

DISCLAIMER
(this applies to every section of the Startup Pack)

We hope people using this Startup Pack will gain greater understanding of some of the key legal issues they are likely to face. However, the documents in it provide only a general overview of these issues. They are governed by English law and are only appropriate for private limited companies registered (or to be registered) in England and Wales.

It is not a substitute for comprehensive advice on the particular circumstances of your business. The Startup Pack has been prepared on a generic basis, as a guide. You should seek legal advice before taking any further action. No responsibility is taken for any actions taken or not taken on the basis of this Startup Pack. DLA Piper UK LLP is not providing any advice to you in connection with this Startup Pack.

This Startup Pack is subject to the terms and conditions of use stated on the final pages.

About DLA Piper

Whether you're planning to create a startup or to scale up an existing one, with our global relationships with venture and strategic investors, lenders, entrepreneurs and corporates, we're here to help you get organised and on your way.

DLA Piper is one of the world's largest and most geographically diverse business law firms. Our clients range from startups and high-growth companies to AIM- and FTSE 100-listed companies.

We've been established in Silicon Valley and the West Coast for more than 30 years, giving us a wealth of experience relating to emerging growth businesses, both in life sciences and technology. We also have a significant presence in most high-growth hubs across the world, including London, New York, Boston, Northern Virginia and Washington, DC, Austin, Beijing, Tel Aviv, Shanghai, Singapore, Los Angeles, San Francisco, San Diego, Stockholm, Moscow, Sydney, Melbourne, Dublin, Vancouver and Toronto.

Our teams include award-winning lawyers working in venture capital, private equity and M&A, litigation, international tax structuring, compliance and investigations, IP strategy and enforcement, licensing and distribution, and clinical trial advice.

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Tunisia
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Zimbabwe

Asia Pacific
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China
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** Cooperation firm*

In the pack you will find all the key legal documents an early stage startup needs. These include:

- Articles of association
- A subscription and shareholders' agreement
- An intellectual property assignment agreement
- A non-disclosure agreement
- A privacy policy
- A standard employment contract
- Standard terms for website use

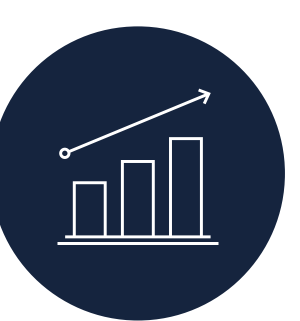
We have also included:

- A step-by-step guide to setting up a private limited company in the UK

- An intellectual property, sales and marketing checklist

- A tax checklist

- A checklist of additional employment considerations



- A guide to the UK regulatory framework for raising equity finance

An introduction to key legal documents for startups

What legal documents does a startup or high-growth company need to formalise their business? You will find them here along with useful guides and checklists. These documents have been created by lawyers experienced in corporate, intellectual property, commercial contracting, regulatory, employment and tax matters. They are intended for those considering setting up a company, who have recently incorporated or are about to receive a modest amount of funding.

Incorporating a private limited company in the UK

The most common startup vehicle in the UK is the private limited company. One of the first steps for any entrepreneur is to consider forming such a company. Benefits include:

- Legal separation from its owners. It can enter into contracts with third parties and hire employees. It will also probably be required for financing (whether by crowdfunding, equity investment or debt).
- It allows founders to control how much financial risk they are exposed to. A founder may lose their investment in the startup, but unless there is wrongdoing, their home and other assets will be protected.
- A company can be a way to pool and protect intellectual property. If intellectual property has been developed with colleagues, a company enables the founders to share ownership and avoid disputes.

This Startup Pack is aimed at early-stage and high-growth businesses considering a private limited company structure registered in the UK. If you are considering alternative structures, or starting or expanding your business in another jurisdiction, you may need advice on local law. You can find a general overview of the relevant issues in our Going Global guides, which provide excellent overviews of corporate, employment, intellectual property and tax considerations in key jurisdictions.

Note: you should consider your business structure from a tax perspective. If you have any doubts about whether a company is the best structure for you, consult a tax advisor.

A step-by-step guide to setting up a company in the UK is provided in this guide.

The DLA Piper Guide to Going Global

If you want to expand overseas, the DLA Piper Guide to Going Global is helpful and detailed. It can be found here:

Guide to Going Global.

Key legal documents

The Articles of Association

How will your company be run and who will have a stake in it? The two most important documents that cover a company's governance are the articles of association (Articles) and the subscription and shareholders' agreement (SSHA).

The Articles form a contract between a company's shareholders and must be filed at Companies House. They regulate the company's internal management and how power and control is shared between the shareholders and directors. The Articles address the day-to-day practicalities of running the company and other important information about the company's make-up and ownership. The most common form of Articles for newly formed companies are the Model Articles.

The Model Articles are available from Companies House here:

The Model Articles.

However, our experience from the many venture deals we do each year, as well as feedback from the startup community, lead us to believe that the Model Articles are not sophisticated enough for most startups and high-growth companies. Unfortunately, they do not deal with many common issues startups face.

For example, one key problem often fatal for an early-stage company is a dispute between a co-founder or co-founders who leave the business (whether amicably or acrimoniously). To address this, and other common issues, we have prepared a bespoke set of Articles.

A precedent set of articles of association is provided in this Startup Pack.

The Subscription and Shareholders' Agreement (SSHA)

This private and confidential document records the commercial arrangement between the parties. It will include details of proposed subscriptions for shares and other key terms for investing in the startup.

The SSHA in the Startup Pack draws on the practical experiences of startups and high-growth companies that have received financing from private investors such as family and friends, angel and seed investors. It is subject to the terms and conditions of use set out on the final page. The two main purposes of the SSHA are:

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

The SSHA must reflect the commercial agreement between the founders and/or any investors and it is important to get the correct balance. You should consider how much equity will be available to investors, as this may have a significant impact when you seek further investment. Founders are obviously likely to want to retain as much equity in, and control of, the company as possible. If the terms of the shareholders' agreement are disputed, you may need further legal advice.

A precedent SSHA is provided in this Startup Pack.

Key legal documents

The Intellectual Property and Assignment Agreement

What are the original ideas on which you plan to build your success? Intellectual Property (IP) is one of the most important parts of any business. In most technology or life sciences companies, IP will be at the very core of the business. As such, take care over any agreement that involves sharing or using it, whether the IP is yours or belongs to a third party.

An IP Assignment Agreement transfers ownership and rights of the IP specified in the agreement from one person to another.

The IP Assignment Agreement provided in this Startup Pack is a simple way to transfer ownership of someone's relevant IP rights (such as rights created by an individual in connection with the business before they became an employee, director or shareholder or a consultant). Under the agreement, that individual would no longer have any rights in or to the IP assigned.

Note: the IP Assignment Agreement should be used only in straightforward circumstances to transfer existing IP that is easy to identify and define. IP must be described fully enough to identify clearly what is assigned. If the IP is not described correctly, the assignment may not be effective and may not transfer what you want it to. Make sure the assignment is consistent with any other agreement you have with a particular person.

If you have any doubt or if the IP concerned is particularly important, valuable or difficult to define, or if there is additional complexity (eg in terms of ownership), we recommend you seek legal advice to ensure it is properly transferred and all issues have been covered.

A precedent IP Assignment Agreement is provided in this Startup Pack.

Key legal documents

The Non-Disclosure Agreement

Do you need to keep a secret? Keeping key company information and IP confidential is important to protect your fledgling business. However, you must balance confidentiality with the need for further investment and collaboration with third parties. To do this you may have to share private information.

Before sharing sensitive information, it is best to have a non-disclosure agreement (NDA) in place. Where this cannot be done, a company could try to protect information and IP by making it clear – in writing – to third parties that any information provided must not be disclosed to anyone else and by limiting the disclosure of such information to a need-to-know basis.

But you should be aware that venture capitalists and other sophisticated investors often refuse to sign NDAs as this may restrict their ability to evaluate other potential investments in similar industries to your company. **As such, this NDA is not intended for potential investors.** The British Venture Capital Association (BVCA) has produced a draft NDA appropriate for these circumstances, which investors are likely to be familiar with.

Please click here for a link to the BVCA NDA.

The content of an NDA depends on the information being disclosed, the relationship between the parties and why the information is being shared. An NDA cannot really be general or standard form because it must fit specific circumstances.

The precedent NDA in this Startup Pack is intended for the early life of a startup, when it is deciding whether to collaborate with another entity or individual. It is not intended to cover future collaborations. If the relationship develops, you should obtain advice on the arrangements needed to manage confidentiality in the future.

The NDA in the Startup Pack includes mutual promises to keep information confidential and puts obligations of confidence on both parties covering information disclosed by you and your representatives. It also provides ways to end the relationship, including the return and destruction of confidential information.

It is important that an NDA is suitable for specific circumstances. Seek legal advice if you are unsure whether this NDA applies or if you have any queries on specific provisions.

Where confidential information is particularly valuable, make clear that it is covered by an NDA. For the purposes of evidence, you may wish to state that any information provided is subject to a signed NDA (as well as marking it "confidential"). Alternatively, you could list key confidential documents in the NDA itself.

In instances where someone has been given information before signing an NDA, you may wish to send a follow-up email identifying the confidential information and confirm that it is covered by any NDA that has been signed.

A precedent NDA is provided in this Startup Pack.

Key legal documents

The Employment Contract

Now you have more work to do than there are hours in the day, is it time to look for outside help? As your business grows, you will need staff. At some point in their corporate life, all startups employ people.

As you expand your business, you may need personnel with technical, marketing or operational expertise. It is important that the rights of both the company and employees are properly addressed. An employment contract between the parties is the best way to protect the company.

- A precedent employment contract is provided in this Startup Pack.

The essential terms of an employment contract include role, the date employment began, the nature of its term, salary and other benefits, working hours and location.

For startups in technology and life sciences in particular, the contract must also cover confidentiality and ownership of IP. All intellectual property created by any employee during employment will usually remain the company's property. Restrictive covenants after employment ends should also be included to protect the company's interests, staff and clients.

Terms of Website Use

You've produced a fantastic website for your business, now what? It is very important set out clear terms of use for consumers who visit it. These may include limiting access rights and setting out clearly what constitutes prohibited use and unauthorised uploading of material. The company will also want to limit its own liability, protect intellectual property and set out the terms on which it may revoke access rights.

- An example of a document setting out terms of website use is provided in this Startup Pack.

Privacy Policy

You've heard of GDPR and data breaches – what does it mean for your business and how do you protect the company and the information of others? As the amount of personal data grows ever larger, its use is increasingly regulated across the world. Under data protection laws – most pertinently, the EU's General Data Protection Regulation (GDPR) – individuals must be told about the collection and use of data that relates to an identified or identifiable individual at the time it is obtained. If you collect or use any personal data, details must be provided to the person you collect it from. These include when you will collect information, what you will collect and how you will use it. It may be helpful to review the Information Commissioner's Office (ICO) Registration Self-Assessment to understand your obligations and whether you need to pay a fee to the ICO, see here:

- ICO Self-Assessment.

It can be difficult for startups to keep track of this, particularly as they grow and the ways they collect or use personal data evolve. It is important to comply with data protection laws, not least because you risk being fined for the improper collection or use of personal data. Other important privacy-related matters must also be considered, including using cookies.

- A precedent privacy policy is provided in this Startup Pack.

Glossary of useful venture capital and company terms

Useful industry terms

Angel groups
Organisations, funds and networks of high-net-worth individuals formed specifically for investing in startup companies.

Angel investor
A high-net-worth individuals who invests in startups.

Anti-dilution provisions
Mechanisms by which certain shareholders' stakes in a company are protected from being diluted (if additional shares are issued at a lower value) without their having to make material new investments.

Articles of Association
The main constitutional document of every company, governing internal matters.

Board
The directors of the company.

Brokers
A person or firm engaged by an early-stage company to help introduce investors or arrange funding rounds for a fee.

Business day
Any day other than a Saturday, Sunday or public holiday when banks are open for normal business.

Call
An option (but not an obligation) for a purchaser to buy a specified number of shares from a seller at a specified price during a specified period, or when specified events occur.

Cap table
A table describing a company's capitalisation, including the names and number of shares owned by each principal/founder and investors, and any other obligations to issue shares, such as convertible debt, warrants or employee options. The table is often segmented to describe each of several funding rounds and should clearly differentiate holders of different classes of shares.

Change of control
Acquisition of a company through a merger, consolidation, share exchange or another transaction or series of transactions resulting in a change in ownership of the issued shares. The shareholders before the transaction will no longer own, directly or indirectly, at least 50% of the voting power of the surviving entity. It can also mean the disposal by sale, licence or otherwise of all or the substantial part of a company's assets.

Confidential information
This definition can vary (see any Non-Disclosure Agreement) but will commonly include all information known only to a group of individuals or the company, but not the public. This could include details of transactions, customers, employees and other sensitive matters.

Conversion rights
Rights by which preference shares are changed into ordinary shares at a pre-agreed ratio. For example, one preference share might convert into one ordinary share. Holders of preference shares usually have this right at any time after acquiring the shares. A company may want to force a conversion upon an IPO (see below), a change of control, on reaching certain sales or earnings targets, or on a majority (or agreed higher threshold) vote of preference shareholders.

Convertible loan note
An instrument by which investors lend money to companies which can, on certain agreed terms or events, convert into shares in the company.

Co-Sale provisions or tag-along rights
These give 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 their shares they want to accept. Most often they are sought by investors with a relatively small portion of a company compared with the founders, managers or other investors.

Deed of adherence
A document a new shareholder must sign if there is an existing shareholders' agreement to have the same rights and responsibilities as other shareholders. New shareholders agree to adhere to the existing agreements.

Dilution
The reduction in percentage ownership that shareholders suffer if additional shares are issued; for example, by subsequent funding rounds.

Director
Any person serving on the board of directors of the company.

Useful industry terms

Dividends
Profits paid by the company to its shareholders as a return on their original investment. Generally, they are paid at the discretion of the company (and subject to any legal restrictions on doing so). Dividends are not often paid until much later in a company's life, as startups are rarely able to pay them lawfully and would most likely try to retain any earnings for reinvestment.

Due diligence (DD)
The process of validating a potential investment. This usually involves examining certain areas of a company's business, which might include market structure, competition and strategy, technology assessment, management team, operating plan, financial review and legal review.

Equity
Owning an interest in a company, usually via shares or share options.

Event of default
A specific event, such as failing to pay a sum due under a loan, that gives a party (usually lenders) specific rights, such as demanding full payment of outstanding debts or enforcing any security they may have.

Exit
The means for shareholders to see a return on their shares. This is normally a flotation on a public stock market or a sale of the company and is likely to come later in the company's life.

First refusal rights
A negotiated obligation for the company or existing investors to offer shares to the company or existing investors at fair market value, or a previously negotiated price, before selling them to new investors.

FMV (fair market value)
An acceptable price for selling to an independent third party. It will represent 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 it.

Incorporation
The act of registering a company.

Information rights
Typically given to investors or shareholders to let them see certain company information (including financial information, business plans and budgets).

Intellectual property
A right or non-physical/intangible resource that is presumed to give the company an advantage in the marketplace. It could include patents, trademarks, trade secrets, copyrights and licences.

Intermediary (financial intermediary)
A person or institution who assists other people or entities to make or arrange investment decisions.

IPO (initial public offering)
The regulated process by which a private company registers its shares for trading in public markets ("going public" or "flotation"), such as the London Stock Exchange, NASDAQ or the NYSE.

Investment bankers
Representatives of financial institutions who help issue new securities, including managing and underwriting issues, as well as trading and distributing securities.

Investor
A person or company other than the founder or an employee who buys or subscribes for shares in a company.

Issued share capital
The amount of shares in a company that has been issued and is held by shareholders.

Key person
A specific employee identified as having material value for the company. Key persons are often covered by specific company insurance policies and have more sophisticated service contracts.

Leveraged buyout
When a purchaser who acquires a company finances the transaction using equity funds and third-party bank debt. Any third-party debt is usually secured against the company's assets.

Licensed intellectual property
Any intellectual property licensed to the company by a third party.

Limited Liability Partnership (LLP)
A business owned by LLP members, who manage it themselves or appoint managers to do it. All members and managers have limited liability and, in most cases, are taxed in the same way as a general partnership; that is, the business entity is not subject to tax, just the members.

Member
Another word for a shareholder.

Mergers and acquisitions (M&A)
Transactions as part of a corporate strategy that involves buying, selling, merging and dividing companies.

Non-Disclosure Agreement (NDA)
An agreement that prevents private information revealed by one party to another from being disclosed to third parties, usually for a fixed term.

Useful industry terms

Ordinary shares
The most common form of share for a startup company. If the company goes into liquidation, holders are generally entitled to all its assets and cash, after obligations such as bank debt, corporate debt, taxes, trade creditors, employee obligations, and preference shares (if applicable) have been paid. Founders and employees almost always own shares or options for ordinary shares.

Owned intellectual property
Any intellectual property owned or developed by a company.

Post-money valuation
The valuation of a company immediately after a new round of investment, that is, the previous valuation plus the total new investment.

Pre-emptive rights
The right of a shareholder to provide financing or acquire further shares in the company on the same terms offered to other parties up to the amount needed to maintain their percentage stake in the company.

Pre-money valuation
The valuation of a company immediately prior to a new round of investment.

Preference shares
The class of share most likely to be held in angel or venture capital investments. Preference shares outrank ordinary shares but are subordinate to any debt. The bespoke rights attached to preference shares will be detailed in the Articles of Association (see above). This will often require tailored articles of association to be adopted. The rights attached to preference shares are likely to include voting, dividend, management, conversion and other rights and preferences beyond those conferred by ordinary shares. Importantly, preference shares aim to ensure “last money in is the first money out” if the company fails.

Private placement
Selling or issuing shares, bonds or other investments not to the public, but directly to institutional or accredited investors. Unlike a public offering, a private placement does not require a detailed prospectus.

Put
An investor’s right to force a company to buy their shares. It is used by investors to ensure the eventual liquidation of their holding and is the opposite of a call.

Seed financing or seed round
The early-stage capital used to get a business off the ground. It can come from various sources, including the founders, friends and family, business contacts, angel investors, crowdfunding or institutional seed funds.

Series A
The first round of significant institutional investment for a company. Subsequent rounds of funding follow alphabetically (eg series B, series C) as the company raises larger rounds of investment.

Sophisticated investor
An investor with a business background and enough investment experience to make reasonable investment decisions about a company. With startup financing, for legal purposes certain statutory tests will determine whether someone qualifies as a sophisticated investor.

Share option
The right to subscribe or purchase securities (usually ordinary shares) at a stated price in the future.

Subordinated debt
A debt instrument subordinated to lending from institutions such as banks. This type of debt does not normally limit the company’s borrowing power with banks.

Subscribe
An application to acquire shares in the company not previously issued to anyone else.

Subscription price
The aggregate price paid for new shares in a company.

Termination event
Any event listed in an agreement that will terminate it immediately.

Term sheet
A preliminary document that often includes the key terms of an investment in a company, including an agreed valuation, the proposed capitalisation table (see above), key financial and legal terms and both parties’ rights.

Unissued share capital
Shares that a company can allot or issue but has not yet done so.

Useful industry terms

Venture capital
The financing an investor would provide to an early stage/startup company. The investor or venture capitalist (who could be an individual, bank, fund, etc) will believe the company has long-term potential to deliver returns on the investment. This is the riskiest type of investing, but the risk is often mitigated if one company in the investor's portfolio makes significant returns. Therefore, venture capitalists often invest in a lot of companies, expecting most to fail but counting on an outlier to achieve returns well above the total invested.

Venture capitalist (VC)
A specialist in providing equity and other forms of long-term risk capital to enterprises. They usually deal in firms that have a limited track record but can expect substantial growth. A venture capitalist may provide funding and varying degrees of managerial and technical expertise.

Venture debt
Provided to a company by a venture debt fund or bank to bridge between equity funding rounds. This usually involves a higher interest rate than traditional bank debt to compensate for the extra risk. The lender may also take "warrants" (see below) in the company, as well as security over its core assets, such as the IP.

Venture fund
A partnership formed by two or more people to carry on a business with a view to making a profit. It must have at least one general partner (who is often responsible for managing the business of a limited partnership (LP)) and a limited partner (who must contribute capital). In most cases, it is taxed in a similar way to an LLP, so just the members – not the LP – are subject to tax. Many venture capitalists are structured as funds, with the general partner making investment decisions.

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

Warranty/warranties
Specific statements relating to the company given by shareholders (or sellers) to investors acquiring shares. The aim is to reassure purchasers about the state of the company.

Step-by-step guide to setting up a company in the UK

Step-by-step guide to setting up a company in the UK

You can choose from several different legal structures for your new business and must decide which is best for you. Most probably it will be a private limited company, but you should seek legal and/or tax advice if you are not sure.

Below are simple instructions on how to set up a private limited company using the online service at Companies House. Another – more costly – option would be to instruct a company formation agent to incorporate the company for you.

We also explain the basic steps for checking the availability of company names and how to set up, or incorporate, a company online.

People are often surprised how cheap and simple it is to incorporate a company in the UK. Setting up as a private limited company has several advantages. It is, however, a formal process that must be taken seriously – for example, there will be continuing compliance requirements (including annual and event-driven filings). Details of these obligations are on the Companies House website.

How to check if your preferred company name is available through Companies House

Right from the start you should consider what you will call your business and its probable branding. Be aware that registering a company name will not give you trademark protection. You will need to carry out separate trademark searches.

You can find further information in the intellectual property checklist in this Startup Pack.

Go to the **Companies House WebCheck** service:

Companies House WebCheck.

- Type in all or part of your proposed name in the “name” box on screen;
- Select the third option below the name box “Company Name Availability Search” and click “search”; and
- The results will be displayed on the screen in red.

They are likely to say:

“There are no exact matches found. The company name is not currently registered.”
This means your proposed name is available for registration; or

“The following are considered to be the ‘same as’ your chosen name so would prevent it being registered.”
This means the proposed name is not available.

Step-by-step guide to setting up a company in the UK

Using the Companies House Web Incorporation service to register with Companies House

First, go to:

www.companieshouse.gov.uk/promo/webincs/

then:

- Register as a new customer using the prompts.
- Enter all the necessary company information, including its name and registered office (note: the company type should be selected as "Limited" and the region should be "England and Wales" or "Scotland"). Also confirm when the company will start doing business and what its business activities will be.
- Enter information about the proposed director(s) – probably the company's founder(s) – including their personal consent information for security purposes (this will be needed for future online company filings). You can add additional directors and/or a company secretary now or later.
- Enter information about the company's share capital. It is up to the founder to decide this amount. For a simple startup, a typical amount would be 100 ordinary shares of GBP1 each. So select "ordinary" in the "class of share" box and 100 in the "number of shares" box.
- Confirm whether a person or persons will have significant control of the company. In a startup this would often be the founder or founders (if they hold or can vote at least 25% of the share capital).
- Enter details of the company's first shareholders (also known as subscribers). This will include the number and class of shares being subscribed for. At this stage, we would expect most startups to have one class – ordinary shares.
- Accept the statement of compliance (note: the link to the memorandum of association shows the company's first shareholders). The Model Articles have to be adopted in the first instance. Bespoke Articles (see below) must be completed and sent to Companies House separately.
- Check the overall summary to ensure all the information is correct. Once confirmed, pay the required fee.

That's it. When you receive confirmation from Companies House, your company is up and running

Your private limited company has a separate legal personality from its shareholders, so remember to use it to enter into contracts, open bank accounts and so on.

You should also bear in mind the annual and event-driven filings that must now be made at Companies House (either online or by post). Detailed information on this can be found in the Guidance section of the Companies House website.

We have also included a guide to the UK regulatory framework for raising equity finance, which may be useful.

Framework For Raising Equity Finance.

Articles of association

Articles of association

Two key documents cover how a company is run. As we said earlier, the first is the Articles of Association (Articles) and the other is the Subscription and Shareholders' Agreement.

Subscription and Shareholders' Agreement section below.

The Articles are public, so make sure that commercially sensitive information appears only in the Subscription and Shareholders' Agreement. This includes specific details about share and income rights, and leaver provisions and exit provisions (see the Key Terms section below):

Key Terms for the Articles.

The Articles have been prepared on the basis that the company is receiving seed financing from friends, family and/or other private investors. They assume that there will be only one class of shares (ordinary shares). As they do not refer to preference shares or multiple classes of ordinary shares, they are not suitable for later-stage investment.

Make sure you are comfortable that the Articles suit your circumstances. You may need legal advice to check this or if you are unclear about the meaning of any provisions.

Download our precedent Articles here.

Key terms

Leaver Provisions

The Articles include specific provisions for employees holding equity in the company. However, these would only apply to a founder owner if they have signed an employment contract (or consultancy or service agreement) with the company.

If an employee leaves the company, they will be deemed to have offered some or all their shares for sale. The price of such shares will depend on the circumstances of leaving.

A departing employee will be a Good Leaver, a Bad Leaver or an Intermediate Leaver. These different types, with their consequences, are defined below.

The fair market value means the price agreed between the leaver and the company or, if no agreement can be reached, the price set by a third-party valuer, in accordance with a procedure set out in the Articles.

For Intermediate Leavers, the Articles apply a concept of "value vesting." This means that the price at which they will be deemed to have offered to sell all their shares will depend on how long they have been employed. The Articles currently contemplate monthly vesting over a four-year period (ie 2.08% of the value vests per month, with full vesting at the end of the fourth year), but this can be tailored as appropriate. Provisions can also be included to ensure no vesting occurs in the first year. (This is often referred to as a cliff, and means that if someone leaves in the first year they receive no value).

These vesting provisions will have to be tailored to suit your business. It is common for employees to leave a business, so these provisions are important.

Type of Leaver	Circumstances of Leaving	Consequences of Leaving
Good Leaver	Someone who stops being employed by the company in any of the following circumstances: • Death; • Permanent disability or ill health that results in them becoming permanently unable to work; or • Resignation solely because the second set of circumstances above have occurred to their spouse or child. The board (with the consent of a majority of investors) can also decide that someone is a Good Leaver.	The employee is deemed to have offered to sell all their shares for the fair market value. The board (with the consent of a majority of investors) has the right to allow an employee to keep all or some of their shares.
Bad Leaver	Someone who stops being employed by the company and is not a Good or an Intermediate Leaver. This would cover most employees who leave voluntarily.	The employee is deemed to have offered to sell all their shares for the lower of the fair market value or the nominal value. The board (with the consent of a majority of investors) has the right to allow an employee to keep all or some of their shares.
Intermediate Leaver	An employee who is neither a Good Leaver nor a Bad Leaver. The Board (with the consent of a majority of investors) can also determine that a Bad Leaver is an Intermediate Leaver.	The employee is deemed to have offered to sell all their shares for: • Vested shares, the fair market value; and • Unvested shares, the lower of the fair market value or the nominal value. The board (with the consent of a majority of investors) has the right to allow an employee to keep all or some of their shares.

Key terms

Share Capital

The Articles assume that shareholders hold the same class of ordinary shares and each ordinary share entitles its holder to the same rights (when it comes to voting, and income and distributions). If a shareholder is to receive different or preferential treatment, the Articles may not be suitable, and you will need specific legal advice. It is most unlikely that these articles will be suitable for Series A and beyond, when an institutional venture capital investor will most likely require preferential rights in relation to the founders and other shareholders.

Transfer Restrictions

It is important for a high-growth company to manage its shareholder base properly. One way to do this is to restrict the transfer of ordinary shares to third parties.

The Articles provide that ordinary shares can be transferred only in the following circumstances:

- To a permitted transferee (in the case of an individual, a family member or family trust, or in the case of a corporate entity, a member of its group), provided the board of directors has agreed; and
- In accordance with the pre-emption provisions. Any shareholder wishing to transfer shares must first offer them to the other shareholders for an agreed price.

Further minority protections

Drag right

If the investors and holders of more than 75% of the ordinary shares (or whatever percentage decided (generally, more than 50% but less than 90%)) wish to transfer all their ordinary shares to a third-party purchaser, they can require all other shareholders to sell their ordinary shares to that purchaser on the same terms. This prevents a minority shareholder from being able to block a sale of the company. In practice, the interests of the founders and the investor would often be in line as it would be hard to sell the business without their being completely engaged in the process. The drag is therefore usually used to sweep up any stragglers, as any buyer will insist on acquiring 100% of the issued share capital.

Tag right

If shareholders propose a sale of shares that would lead to one person holding more than 50% of the share capital, all shareholders can sell all their shares to that purchaser on the same terms. This gives a minority shareholder the right (but not the obligation) to sell their stake at the same time as the majority. You can also tie the 50% threshold to the shares held by the investors.

How to complete the articles

1. Read the disclaimer on the front page of the Articles in full.
2. Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
3. Review the document to make sure you are comfortable with its content, and that it is appropriate for your needs. If in doubt, seek legal advice.
4. Arrange for the special resolution to be signed and dated by shareholders holding at least 75% of the company's share capital. Once signed and dated, the special resolution and the new articles must be sent to Companies House (Companies House, Crown Way, Cardiff CF14 3UZ) or filed online via the Companies House portal.
5. Keep the original document(s) or a copy of the document in a safe place, as well as an electronic back-up of the final signed version.

Subscription and shareholders' agreement

Subscription and shareholders' agreement

The other important document concerning how a company is run, alongside the Articles of Association, is the Subscription and Shareholders' Agreement (SSHA).

This private and confidential document records the commercial arrangement between the parties, including details of any proposed subscription for shares and other key terms of the investment.

The SSHA has been prepared for company receiving seed financing at an early stage from friends, family and/or other private investors, but can be adapted for use with multiple investors.

The SSHA has two main purposes:

- To provide the legal mechanism for investors to subscribe for shares. It will usually include details on price, conditions to subscription and number of shares; and
- To define (with the Articles) the rights and obligations of shareholders and to govern their relationship with one another.

The SSHA must reflect the commercial agreement between the founders and/or any investors and it is important to achieve the correct balance. Founders should carefully consider how much equity they give away to investors as this may have a significant impact when seeking further investment. In practice, founders are likely to want to retain as much equity in the company as possible.

You should be comfortable that this SSHA fits your circumstances. Seek legal advice to make sure of this or if the meaning of any provision is unclear.

Download the precedent SSHA here.

Key terms

Warranties

These are important contractual statements often given by the company and (sometimes) by its founders (collectively known as the warrantors) to reassure investors about the condition of the company. Investors are also likely to obtain their own financial and legal review (due diligence) of the company and its business.

The warranties serve two main purposes:

- To elicit disclosure of information from the warrantors of any known problems; and
- To provide investors with a potential remedy if any statement about the company later proves incorrect. Any known problems should be set down in as much detail as possible in schedule 5 of the SSHA.

The warranties are given by the warrantors jointly and individually, so investors can choose to bring a claim against any one or more of them for any loss arising from a breach. The SSHA expressly forbids a warrantor from seeking any contribution from another warrantor.

Most warranties are also qualified by the awareness of the warrantors, so warrantors are liable for a breach only if they (or any of the other warrantors) knew about the matter when the SSHA was signed.

All warranties are subject to financial and time limits on claims (other than with fraud).

In the light of the above, founders should be completely comfortable with their co-founders before entering into the SSHA. Given the importance of the warranties, the founders and any key employees may wish to discuss them (and any known problems) together in detail. It is best to disclose all issues to a potential investor to reduce the risk of being sued later. Venture capitalists will be used to seeing a number of issues.

Restrictive Covenants

The scope of these should be considered in detail. To be enforceable, covenants should be reasonable regarding geographical area, the length of restrictions and the type of business covered. If they go beyond what is reasonably necessary to protect the company's legitimate interests, the courts may rule them void or unenforceable. What is reasonable depends, of course, on circumstances.

Majority Investor Consent

The SSHA includes a list of items that require the consent of shareholders with at least 75% of the share capital. This figure can be lower or higher to suit specific transactions. These are designed to protect investors' financial interest in the company.

All existing shareholders also benefit from the statutory pre-emption rights contained in Part 17 of the Companies Act 2006. In general, any new shares issued by the company for cash must be offered to existing shareholders in proportion to their existing holdings before they are offered to new investors, unless shareholders waive that right.

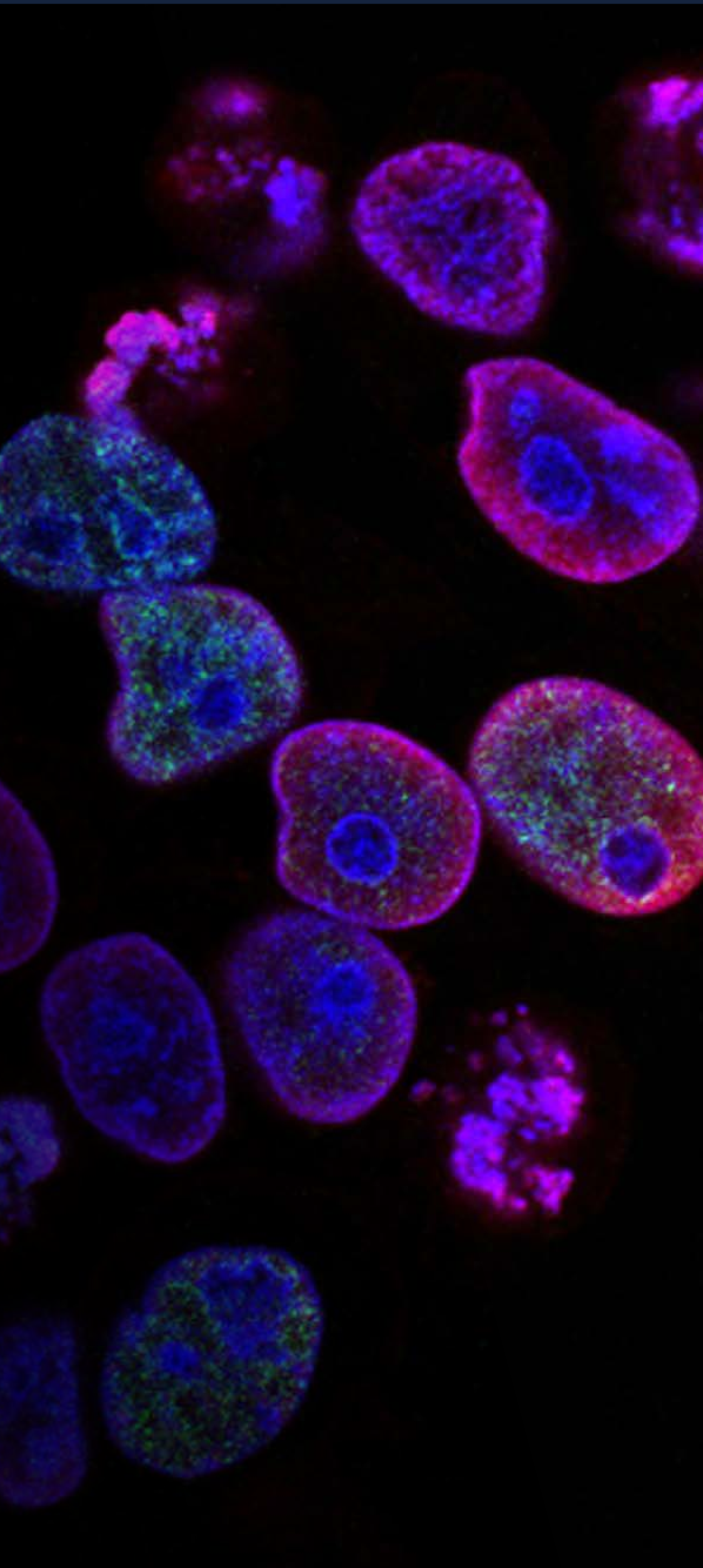
Other

Investors also have the right to receive certain financial information relating to the company. The founders and the company should be careful about what information (financial or otherwise) given to new investors. Once the SSHA has been entered into, most information provided by the company to investors will be covered by its confidentiality obligations.

The founders and the company should always make sure any information provided to investors is correct, to protect the relationship with investors and ensure no legal liability arises.

It is also important to consider whether any tax elections have to be made by anyone as part of the investment round. See the tax checklist for more information:

Download the Tax Checklist.



How to complete the SSHA

1. Read the disclaimer on the front page in full.
2. Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
3. **Schedule 1** – enter full details of the founders and investors.
4. **Schedule 2** – insert the company details. Much of this information can be obtained from Companies House.
5. **Schedule 3** – the deed of adherence is required only when shares are being transferred to a new shareholder. The new shareholder must sign the deed of adherence to accept the terms and conditions of the SSHA.
6. **Schedule 4** – this contains boilerplate provisions dealing with generic contractual arrangements generally found in commercial contracts of this type.
7. **Schedule 5** – this gives the founders the opportunity to disclose to the investors any matters that qualify or contradict the warranties in clauses 4 and 5 of the SSHA. Read through each individual warranty carefully and consider whether you know anything that does (or may) qualify or contradict it in some way. Any disclosure in Schedule 5 must include sufficient detail to allow investors to identify its nature, scope and full implications.
8. **Review the agreement to make sure you are comfortable with its content, and that it is appropriate for your needs. Ideally you should seek legal advice to make sure.**
9. The founders must satisfy themselves that the subscription monies will be forthcoming/are available.
10. Share certificates will have to be distributed to investors.
11. The SSHA must be signed as a deed and dated by all parties in accordance with English law. Under English law a deed must be signed by the relevant individual in the presence of an independent witness. If you have any doubts over the formalities of signing the SSHA, seek legal advice.
12. Keep the original document(s) or a copy in a safe place and an electronic back-up of the final signed version.

Intellectual property assignment

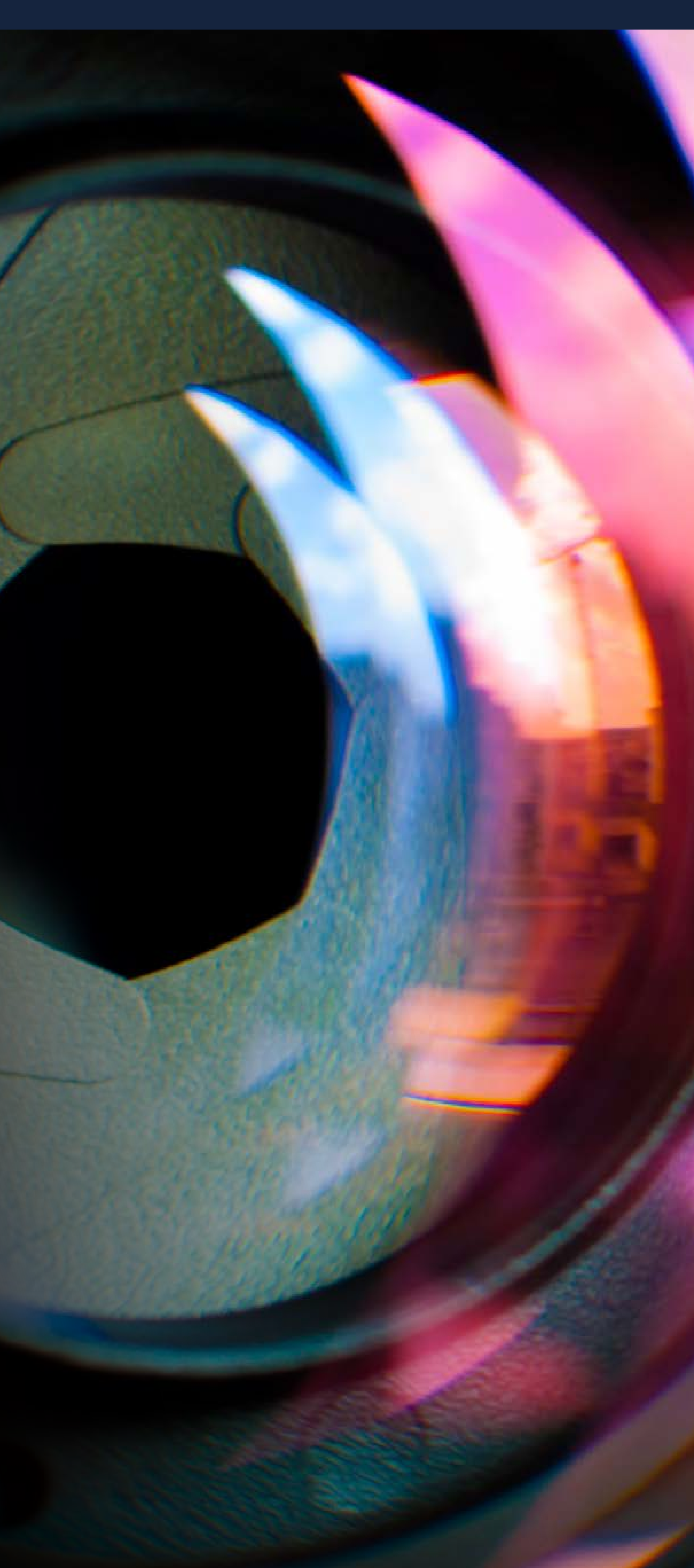
Intellectual property assignment

Intellectual Property (IP) is important, especially for a technology or life science company. It is essential that any agreement relating to sharing or using it – whether the IP belongs to your or someone else – has the effect you think it has. Take special care with this.

An assignment of intellectual property transfers ownership of specified IP from one person to another. This document is a simple assignment to be used to transfer IP rights belonging to an individual – for example, those created by a director or shareholder of your company, an employee before they joined your company, or a consultant you have engaged. Through it, that person will lose their rights to the assigned IP. If they are to retain ownership of the IP, or some limited right to use it, this assignment is unsuitable.

The assignment should be used only in straightforward circumstances to transfer existing IP that is easy to identify and define. Make sure the IP is described in enough detail to identify clearly what is being assigned. If the IP is not correctly described, the agreement may not be effective or may not transfer what you think it does. If in doubt, seek legal advice.

It is also important to ensure the assignment does not clash with any other agreement the person has with you. If the IP is particularly important, valuable, hard to define or if there is extra complexity, seek legal advice to make sure it is properly transferred.



How to complete the IP assignment

1. Read the disclaimer on the front page in full.
2. Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
3. Review the agreement to make sure you are comfortable with its terms, and that they are appropriate for your needs. Ideally you should seek legal advice to ensure this.
4. **Schedule 1** – enter details of the IP being assigned. Ensure it is entered correctly and in as much detail as possible, so it is clear what is being transferred. Include registration numbers for any registered rights. Include pictures or annex copies of documents where this helps identify 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 Assigned Rights (as defined). However, if any do exist, we strongly recommend you take legal advice about their effect on the Assigned Rights and this Assignment.
6. The IP Assignment document must be signed and dated by all parties in accordance with English law. If you have any doubts over the formalities for signing the document, get legal advice.
7. Keep the original document(s) or a copy 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 third parties have notice of your rights. If the assignment is not recorded, a third party could gain rights in your IP. The costs and formalities of registration vary. Contact the relevant registry for further information and take legal advice if you are not sure what to do.

Further guidance

We have also included an intellectual property checklist, which you may find helpful.

Download the Intellectual Property Checklist.

Non-disclosure agreements

Non-disclosure agreements

Before you share any sensitive information with a third party, ensure you have a non-disclosure agreement (NDA) in place.

The form of NDA you need, including the safeguards on confidential information, will depend on the nature of the information, who you share it with and why.

This NDA is designed for the early stages of a startup when you are sharing information with another party so you can decide whether you want to work with each other. It is not designed to cover future collaboration. If you decide to work with the other party, you should take advice on the collaboration arrangements you need to manage your relationship. These arrangements should contain appropriate confidentiality provisions instead of this NDA.

This NDA is mutual, so both you and the other person promise to keep each other's confidential information private. The same obligations 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. At the end of the agreement, or at your request, the other party must return or destroy all confidential information disclosed.

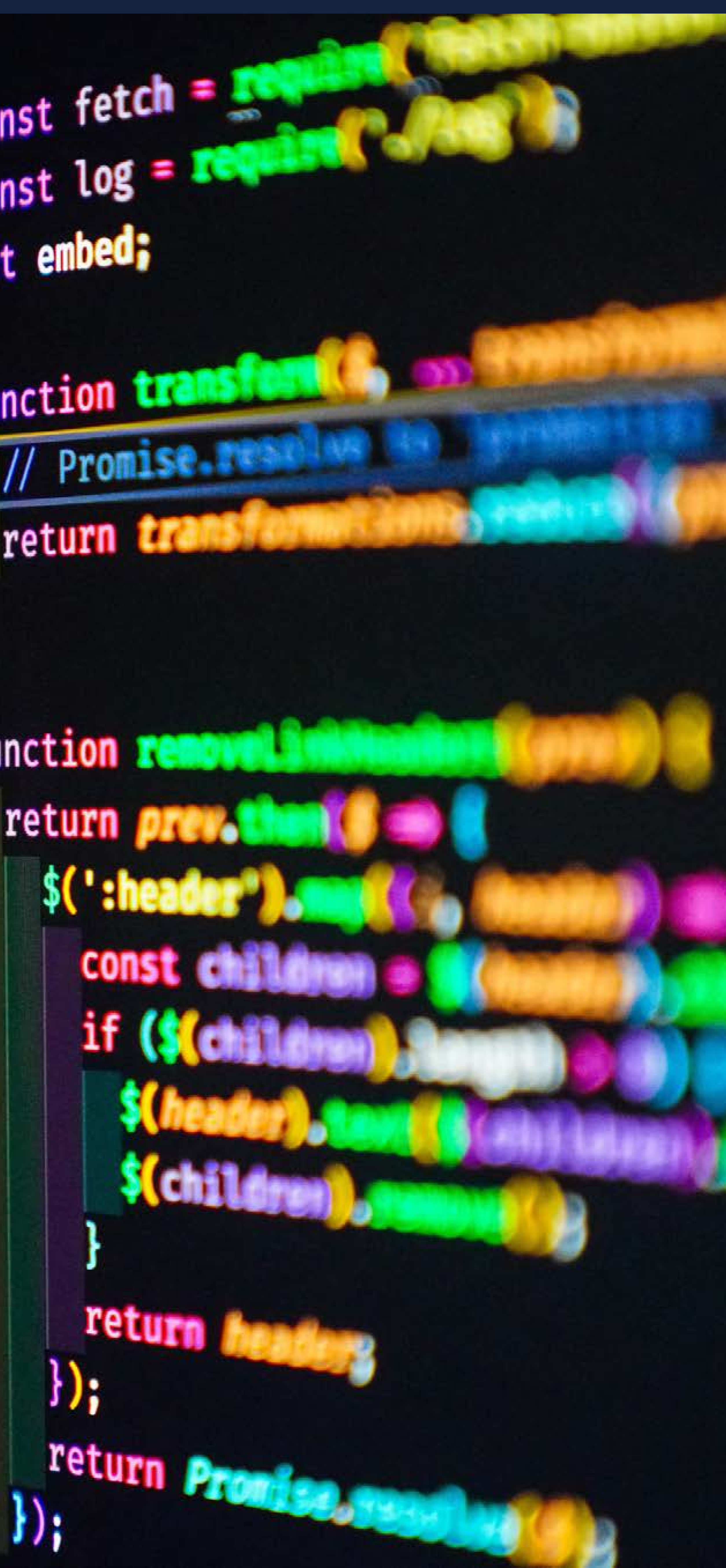
You must be comfortable that this NDA suits how you want to use it. Take legal advice if you are not sure or are unclear about the meaning of any provisions.

This NDA should not be used for potential investors. For an example of such an NDA, the BVCA has produced a draft outline that investors are likely to be familiar with. Please click here for a link to the BVCA NDA:

- BVCA NDA.

As we said earlier, it is uncommon for a VC to agree to an NDA, as they would be concerned about restricting their ability to vet other companies in the same sector.

- Download the precedent NDA here.



How to complete the NDA

1. Read the disclaimer on the front page in full.
2. Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
3. Review the NDA to make sure you are comfortable with its terms, and that they are appropriate for your needs. Ideally, seek legal advice to make sure.
4. The NDA must be signed and dated by all parties in accordance with English law. If you are in doubt about the formalities for signing it, seek legal advice.
5. Keep the original document(s) or a copy in a safe place and an electronic back-up of the final signed version.

A contract of employment

A contract of employment

What are the terms on which you want to employ people? Certainty is best, so formal employment agreements are always advisable. Nonetheless, employers are legally obliged to provide anyone they want to employ for more than a month with a written statement of certain key terms of their employment, within two months of hiring them.

It is important for early-stage startups who are considering expanding their workforce to understand how specific employment-related clauses could affect them. Also, it usually benefits a company to take a consistent approach to employment contracts. This lays down certain standards and expectations for all employees. The contract must adequately protect the company's interests without putting too big a burden on staff, which could discourage them from joining.

Employees must be given certain terms in writing. These include job title, the date employment began and the nature of its term, notice periods, salary information, hours and place of work, pensions information, holiday entitlement and holiday pay, sick pay, disciplinary and grievance procedure information, and details of any collective agreements.

With technology or life sciences startups in particular, it is essential the contract covers confidentiality and ownership of intellectual property. Both these points have been addressed in the employment contract in this Startup Pack. Some people may also have to be made subject to restrictions after they leave the company to protect its confidential information and contacts.

Download a precedent Employment Contract here.

We have also noted some additional issues often overlooked by startups in relation to employment law, which may be helpful:

Download the Employment Checklist.

How to complete the employment agreement

1. Read the disclaimer on the front page in full.
2. Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
3. Review the agreement to make sure you are comfortable with its terms, and that they are appropriate for your needs. Ideally, seek legal advice to make sure.
4. The Employment Contract must be signed and dated by all parties in accordance with English law. If you have any doubt about the formalities for signing it, seek legal advice.
5. Keep the original document(s) or a copy in a safe place and an electronic back-up of the final signed version.

Legal checklists

Legal checklists

IP checklist

The IP checklist covers some initial considerations relating to IP and a startup business, particularly for technology and life science companies.

Rather than providing comprehensive advice on everything that could apply, it is a non-exhaustive list of potential queries and concerns. If you have any particular queries or concerns, seek legal advice.

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

However, as with the other documents in this Startup Pack, seek legal advice on any issues on which you need further detail or clarity.

Go to the IP checklist here.

Tax checklist

This checklist is designed to cover some of the initial tax considerations for a startup business.

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

Go to the Tax checklist here.

Checklist of additional Employment Law considerations

We have also included a checklist of additional employment law considerations often overlooked by early-stage businesses.

Go to the Employment Law checklist here.

Legal checklists

Guide to the UK Regulatory Framework for Raising Equity Finance

Any startup should bear in mind the legal restrictions on seeking investment from third-party sources. Any communication made by a person such as a founder to an investor or potential investor seeking investment in their company (a Promotion) is likely to be subject to the UK's financial promotion legislation.

A promotion cannot be made by someone unless:

- They are authorised by the Financial Conduct Authority (FCA) (unlikely in the case of a startup);
- The promotion has been approved by a person authorised by the FCA (unlikely to be feasible for a startup); or
- The promotion falls within an exemption (see below).

Breaking this restriction is a criminal offence, punishable by up to two years in prison, a fine or both (which can be imposed on the company's officers). Any agreement resulting from a prohibited communication may be unenforceable, with the investor entitled to recover their money and to compensation for any loss.

Common exemptions used by early-stage startups include communications to people who are:

- Investment professionals (including those who are FCA-authorised);
- Certified high-net-worth individuals;
- High-net-worth companies;
- Self-certified sophisticated investors; and
- Associations of high-net-worth or sophisticated investors (such as business angels).

This checklist provides an overview of the relevant UK legislation to be considered by start-ups (though it should not be viewed as legal advice). It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this note.

This checklist is also by no means exhaustive. If you have any queries or concerns in relation to the UK regulatory framework, we recommend that you seek legal advice before taking any further action.

Go to the Raising Equity Finance checklist here.

Intellectual property, sales and marketing checklist

Intellectual property, sales and marketing checklist

This document provides an overview of some of the key initial considerations in relation to Intellectual Property (IP), data protection, advertising, consumer law and setting up a business, particularly for companies in the tech sector, based on the law as it stands in the UK at November 2020.

Note that the law of other countries will differ.

It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this note. This checklist is also by no means exhaustive. If you have any queries or concerns in relation to IP, we recommend that you seek legal advice before taking any further action.

This information 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 posted; however, the law may have changed since that date. This 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 on the basis of this information.

First steps	
Before beginning to invest time and money in building up your business under a particular trading name, brand name or logo, undertake clearance searches to check that your chosen name/logo does not conflict with pre-existing third party rights	The most relevant third party rights are “registered” or “unregistered” trade mark rights, although these are not the only rights that may apply to your new business. You must make sure that your proposed name/logo is sufficiently different to pre-existing registered trade marks for identical or similar goods and unregistered names/logos used by other businesses. The key consideration in this area is whether your name/logo or your use of it could give rise to a likelihood of confusion with the earlier mark(s) or business. You must also make sure that your name/logo could not be said to be taking unfair advantage of, or being detrimental to the distinctive character or reputation of a pre-existing well known trade mark (whether or not registered in the UK). It is advisable to get official clearance searches undertaken and assessed by a qualified practitioner, rather than carrying these out yourself. However, to get an initial idea of potential conflicts you can undertake online searches on search engines and on the online trade mark registries including those at the UKIPO and EUIPO. At this stage it is also important to check whether there is a suitable domain name available that relates to your chosen business name.
Register your trading name, key brand or product names and any logos	Consider registering your main trading name and key product and brand names or logos as trade marks in jurisdictions where you will be marketing or have the most business activities and dealings or in jurisdictions from which you may face the most competition. This is to help to protect them from being appropriated by third parties. Merely having registered a company name provides little protection for the name. Up until 31 December 2020, there are two types of registered trade marks that protect marks in the UK – United Kingdom national trade marks which protect your mark in the UK only and European Union trade marks which protect your mark in the EU. However, from 1 January 2021, EU trade marks will no longer be enforceable in the UK. Businesses who intend to operate both in the EU and the UK should consider registering both EU and UK trade marks to protect themselves in both jurisdictions. You also need to decide what goods and services to register your mark in relation to. We recommend you seek legal assistance in registering trade marks, to make sure you get the right protection to suit your business.

First steps	
Register domain names	Consider what names to register. Domain names should be registered in the name of the company and not the name of the individual who made the application. Consider registering potential variants of your main domain name, for example common typing error variants. As domain names are relatively cheap you can consider registering a number of these. Once registered by another person, it can be difficult to recover the domain name from the third party. A domain name is commonly registered through a domain name registrar. There are a number of registrars offering domain name registration, and they can offer a variety of services at different prices. You should consider a number of different providers to obtain the right service for you. A full list of accredited registrars can be located on the ICANN website.
Ensure that your company is the owner of IP used by your business	As a general rule, except where you are using third parties' IP under licence, all IP that is being used by your company should be owned by your company. Ensure that any individuals or contractors you hire transfer their IP rights in their work they are doing and materials related to it to your company. This can be through appropriate terms and conditions being included in an employment contract, commissioning or consultancy agreements or by a separate assignment. Examples of an employment contract and a standalone IP assignment which contain contractual provisions to transfer IP are included in this startup pack. Where you are using rights that cannot be assigned, make sure that your company is given a sufficiently wide licence to use these rights by the rights owner.
Ensure that your company is the registered proprietor of any of its registered IP	As a general rule, all of your company's IP should be registered in its name, not the names of employees or directors. This includes domain names.

First steps

Do not disclose confidential information, new designs, ideas or inventions without appropriate protection in place	As a rule, confidential information can no longer be protected once it is in the public domain. If you disclose a design you will not be able to obtain registered design protection for it (subject to a one year grace period in certain circumstances). If you disclose an invention before you apply for patent you will no longer be able to obtain patent protection. You can avoid losing protection by disclosing the design, idea, invention or other confidential information to another person under the protection of a **non-disclosure agreement**. Make sure it is clear that the non-disclosure agreement covers what you are disclosing and that the terms of any non-disclosure agreement are appropriate. If the information is valuable we recommend seeking legal advice before disclosing the information and for preparation of the agreement. Also consider what practical steps you can take to protect information (such as only showing a copy of the document to the other person, not providing a copy to them, and marking copies of documents confidential).

Protecting your business IP

Registering your business IP	There are a number of types of IP that can be registered which include trade marks, design rights and patents. Design rights can be used to protect game characters or graphical user interfaces (GUIs) as well as the appearance of real world products. IP can be one of the most valuable assets of a company's business, as it can prevent competitors from offering similar goods or services to you, add value to your company by giving it assets which it can sell or licence, and be used to demonstrate your company's worth to potential investors. It is worthwhile considering IP registrations from the early stages of any business, and developing an IP filing strategy, as many jurisdictions operate a "first to file" registration system. Also as noted earlier you may lose the possibility of obtaining any protection if you do not register the IP before you disclose your design or invention to the public. You should take steps to register IP in jurisdictions that are relevant to your business (which may include jurisdictions where potential competitors are likely to operate). Which rights are important will vary depending on the nature of the business in question. However, registration is crucial to protect, effectively use and exploit IP.

Protecting your business IP	
Don't forget patents	There is a common misconception that patents cannot be obtained in the UK in relation to software or business methods. Whilst it is fair to say it is not as easy to get patents for software or business methods as it in the US, it is still possible to obtain a patent where, broadly, the invention has a "technical effect" and the other usual requirements for patentability are met. Of course if you are operating in the US or may expand to the US, then you can benefit from its more generous system. Examples of patents that have been considered to be patentable in principle (although they may have fallen down on normal patenting grounds) include Apple's "swipe to unlock" and multi-touch features. For more guidance on patents, please see the UK's Intellectual Property Office guidance found here and/or speak to a patent lawyer or attorney.
Protecting your unregistered business IP	Certain IP rights in the UK can arise automatically, such as copyright and unregistered design rights. Where you have designed or created something, it is important to ensure that the documents evidence precisely what you have designed or created and these documents should be retained. Sufficient detail of the creation or design process should be kept to support your claim to own the right and to establish the extent of the right you own. Documents should be dated and identify who contributed to the work.
Use trade mark notices, and use them correctly	Whilst it is not necessary to use a trade mark notice to obtain protection, it can be helpful both to deter third parties from using the mark and to help build up its distinctiveness as an indicator of the trade origin of your goods or services. Where you have a registered trade mark you can use the ® symbol to show that the mark is registered. Note, however, that it is an offence to use this symbol where a mark is not registered. Where you are using a brand name that is unregistered you can use the symbol TM. You can also include a trade mark notice on your goods, website or marketing materials stating that *"[your mark] is a registered trade mark of [your company name]"* or a longer notice, such as: *"The corporate names of [your company name] and the brand names of our products and services are protected trade names and/or registered trade marks. [A non-exhaustive list of our registered trade marks can be found here. If for any reason, any particular trade name or trade mark does not appear on this list, no waiver of our intellectual property rights is intended.] All rights reserved.* *We take breaches of our intellectual property rights seriously and will take appropriate legal action in respect of any infringements."*

Protecting your business IP	
Use copyright notices	As copyright is an unregistered right, it can be particularly useful to include a copyright notice on your goods, website and marketing materials to put third parties on notice of your rights. For individual works you can use the © symbol as follows: *"© [your company name] [year work created]"* The appropriate form of a longer notice is dependent on the nature of the rights and the medium concerned. As an example you could include the following on a website: *"This website and the material which appears on it (for example all text, photographs, logos, graphics etc) are protected by copyright, belonging either to [your company name], or used under licence by us. Although you may view the material for your own non-commercial use, no other use should be made of it without formal permission from us. All rights reserved.* *We take breaches of our intellectual property rights seriously and will take appropriate legal action in respect of any infringements."*

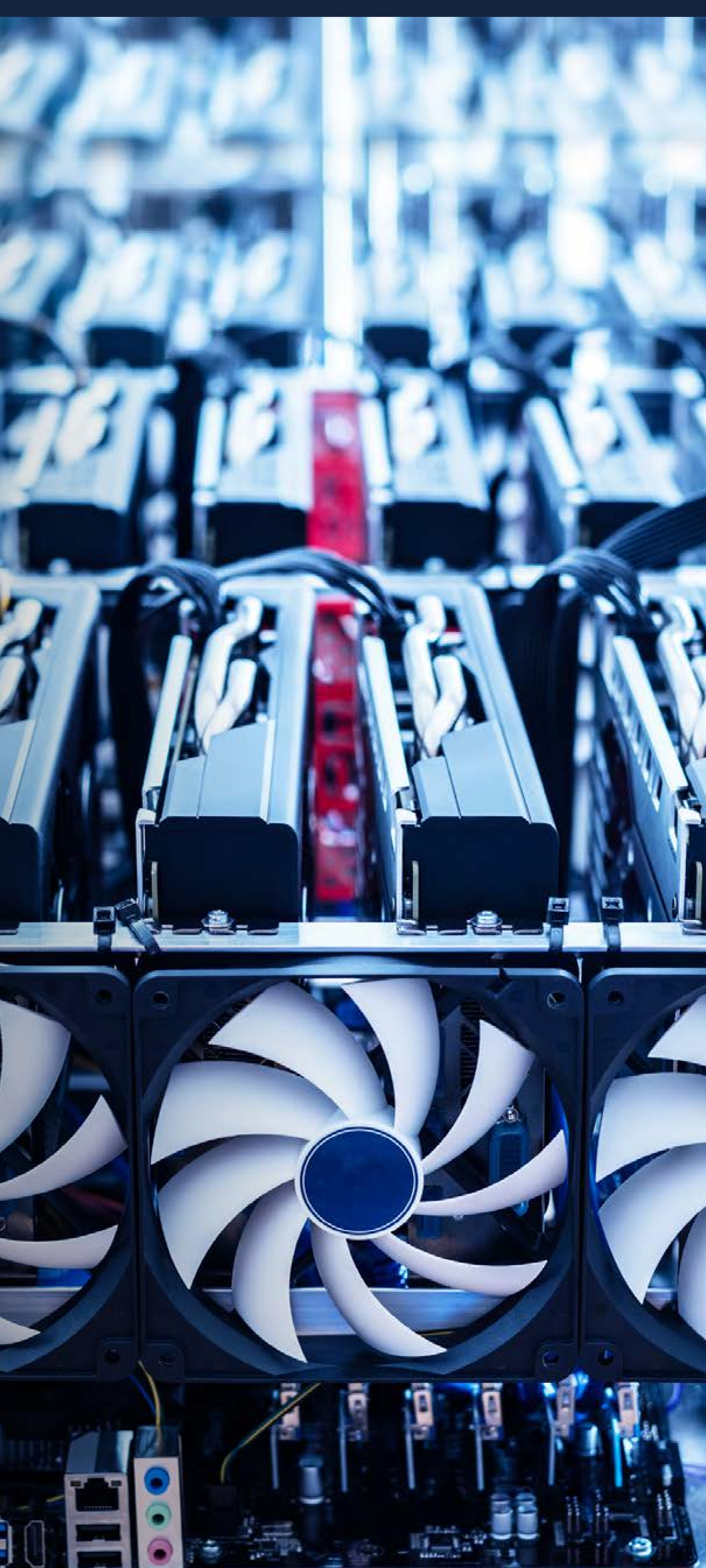
Avoid infringing third party rights	
Ensure that your company has the necessary IP licences for its activities	Where your company uses IP rights which it does not own, you should also make sure that your company has necessary licences in place. Ensure that the terms of this licence are sufficiently wide to cover the use you are making and any potential future use you might like to make of these rights. It is important to keep a record of licences that you have, and to monitor that you are keeping within the terms of the licences. For example a licence may be limited in terms of the number of users, geographical scope or what use you can make of the licensed IP.
The geographical dimension	Bear in mind that you can be considered to be carrying out potentially infringing activities in a country even if you are not based there. For example, if you have a website and make sales through that website to a particular jurisdiction, even though your website is not primarily targeted at that jurisdiction.
Hyperlinking	It is important that you do not link to or embed content which you know or suspect infringes copyright. Include an appropriate disclaimer in your website terms and conditions. Only link to or embed content which you are very confident is on the relevant site with the authorisation of the copyright owner, and is not behind a paywall. Take down links to content which you are notified infringes someone's rights. In any event, as a reputational matter you should take care that sites you link to are reputable.

Avoid infringing third party rights	
Open source	Open source is now far more mainstream (e.g. the UK government has a presumption in favour of open source) and there is less fear and uncertainty regarding the combination of open and proprietary code. There still remain a number of "open source myths", such as "you can't use open source in the proprietary environment". Open source can be used in the proprietary environment, but to do so, careful consideration needs to be given to the risks so as to ensure that no unintended consequences are created through the combination of various aspects of free and open source software (FOSS) and proprietary code through the inheritance of FOSS licence restrictions. Irrespective of the use of open source, the risk remains that use of unlicensed software could infringe someone else's rights. The risk is amplified where proprietary and open source software are combined. If licensed correctly, open and propriety code can sit alongside each other. However, the licensing approaches for open source vary meaning that in some cases unintended consequences arise from modifications made to open source software, and from the combination of open source and proprietary code. If open source software is incorporated into your business software, be mindful of what effect the particular open source software licence(s) have on the subsequent use or licensing of amendments, improvements and adaptations of the software (or combinations of open source and other software) and take legal advice on this. Failure to do so could act as a brake on the ability to sell potentially contaminated products because buyers feel they risk contamination themselves. The risk is a real risk and can affect the value of a deal. In addition, there is the risk of enforcement action by groups such as the free software foundation.
User generated content (UGC)	If your business involves user generated content, bear in mind you may be considered liable for defamatory statements, IP infringement or otherwise unlawful content. Take legal advice on what steps you need to take to minimise your liability for UGC. Some examples include comprehensive terms and conditions, which prohibit infringing/unlawful content, disclaim liability and allow you to take particular content down, and implement such notice and take down procedures. In addition, make sure you have the necessary rights to make use of that content, including use that you can envisage or may wish to make in future. Please see some example website terms and conditions here: Download Website Terms & Conditions.

Other matters	
Website terms and conditions	There are numerous other matters which may be relevant to your business and which we mention here for awareness. It is not possible to give comprehensive guidance on all considerations and legal risks within the confines of this checklist. We would therefore recommend that you seek legal advice, especially in relation to standard terms and conditions and other contracts which you use in the context of your business. A hyperlink to your website's various Ts&Cs and policies should preferably be visible from every page on your website. The more visible they are, the more likely that they will be considered to have been effectively implemented. If your website has a registration process, requiring that users accept your Ts&Cs when registering is a good way of ensuring implementation. **Website terms and conditions and the provision of information** Your website should have appropriate terms and conditions, a privacy policy and a cookie policy which are easily accessible for visitors to the site. The website must also include certain corporate information about the company (such as the name, address of registered office, e-mail address and VAT number). The terms and conditions for UK consumer facing websites should be drafted in accordance with the requirements which apply to business-to-consumer contracts (consumer contracts) made by distance communication (such as online, email, mail-order, telephone and text message). The regulations place obligations on distance sellers to provide certain information before a consumer is bound by a contract and entitle customers to cancel contracts within a certain time-period and receive a refund. See "Distance and off-premises sale to consumers" section below for more details.
Data protection	Data protection law is concerned with the collection, use, sharing and storage of personal data by "data controllers". Personal data is a broadly interpreted concept, which includes any information which can be used by the controller to identify an individual. Identifying someone may simply mean singling them out – for example where a unique individual is tracked online – even if you are unable to "name" that individual. In the UK, the main data protection law is the General Data Protection Regulation (GDPR), which is an EU law. This is supplemented by the UK Data Protection Act 2018. **Notices** All businesses are required to inform relevant individuals (known as "data subjects") about how and why their personal data is used by the business. The necessary notice may be provided in a number of ways, depending on how the business interacts with the data subjects. Commonly, a privacy notice or policy will be available on the business' website, to inform users of the website and customers about the use of their personal data. Privacy notices should also be provided to company employees in respect of the company's use of their personal data.

Other matters

Data protection	
	Data Protection Principles All controllers must comply with the following core principles when using personal data: • **Lawfulness, fairness and transparency**: data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. • **Purpose limitation**: data must be collected for specified, explicit and legitimate purposes and not processed in a manner incompatible with those purposes. • **Data minimisation**: data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. • **Accuracy**: data must be accurate and, where necessary, kept up to date. Reasonable steps must be taken to ensure that inaccurate personal data are erased or rectified without delay. • **Storage limitation**: data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data are processed. • **Integrity and confidentiality**: processing must ensure appropriate security of the data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures. **Internal Policies** The GDPR places a strong emphasis on accountability – i.e. it requires controllers to demonstrate how they ensure their business complies with the data protection principles, and the other obligations under the GDPR. A key way of ensuring accountability is through the use of appropriate internal policies, such as a Data Protection Policy which explains to staff how to comply with the GDPR in the performance of their duties. **Lawful Basis for Processing** Data controllers may collect and process personal data when: • the data subject consents; • the data controller needs to process the data to enter into or carry out a contract to which the data subject is a party; • the processing satisfies the data controller's legal obligation; • the processing protects the data controller's vital interests; • the processing is required to perform a public function in the public interest, or to administer justice; or • the data controller has a legitimate reason for the processing, except if the processing would damage the data subject's rights, freedoms or other legitimate interests.



Other matters

Data protection	
	Data Subject Rights All data subjects have rights to exercise control over their personal data, such as accessing a copy of their data, or asking for their data to be erased. Requests to exercise rights must be complied with within one calendar month, unless the request is particularly complicated. These rights are not absolute, and certain exemptions apply in each case. **The Data Protection Fee** Most data controllers must register with the Information Commissioner's Office (ICO) (www.ico.gov.uk) and pay the data protection fee. The fee is tiered based on an organisation's size / turnover. There are some exemptions from the obligation to pay the fee for organisations which only carry out routine data processing. **Contracts with Third Parties** If a data controller uses a third party supplier to process personal data on its behalf (e.g. a payroll provider or a cloud hosted software application), the controller must enter into a contract with that third party which contains certain mandatory contractual terms. These terms are outlined in Article 28(3) of the GDPR. **International Transfers** Transfers of personal data to jurisdictions outside of the European Economic Area are allowed if the jurisdiction provides "adequate protection" for the security of the data, or if the transfer is covered by "standard contractual clauses" approved by the European Commission, or subject to an organisation's articles of association or other data protection policies. There is no requirement in the UK to notify the ICO of the use of the standard contractual clauses or to file these with the ICO. **Security** Data controllers must take appropriate technical and organisational measures against unauthorised or unlawful processing and against accidental loss or destruction of or damage to, personal data. The measures taken must ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as mentioned above, and appropriate to the nature of the data. If there is a breach of security, that breach must be notified to the ICO within 72 hours, unless there is no likelihood of risk to the data subjects. If there is a likelihood of high risk, then the data subjects themselves must also be notified. This may in any case be advisable, if there are steps which you need those data subjects to take in light of the security breach (e.g. re-setting usernames and passwords). The Data Protection Act 2018 does not specify specific security measures to adopt and implement. However, the ICO recommends that organisations should adopt best practice methodologies such as ISO 27001.

Other matters	
Direct marketing	Direct marketing is the communication of marketing or other promotional material which is targeted at a particular individual. In the UK, there are strict rules regarding electronic direct marketing (which includes email, social media direct messages, SMS and telephone, but not currently online behavioural or targeted advertising) to consumers. These rules are contained in the Privacy and Electronic Communications Regulations (PECR). If marketing to consumers by email, direct message or SMS, you must have first obtained the consumer's prior consent (which must be specific, free and informed). The only exception is where the consumer's contact details have been collected during the course of selling goods or services to that consumer, in which case you can market to them without *opt-in* consent **provided** you gave them a clear opportunity to opt-out of marketing when their details were collected. With respect to telephone marketing, you can either obtain prior consent, or you can call consumers without prior consent, provided you screen against the Telephone Preference Service list. In all cases, your privacy notices to individuals (see "Data Protection") must make it clear that you will carry out direct marketing, and provide details of how they can opt-out of / prevent this.
Advertising	If your business involves advertising or you are making advertising statements (for example on your website), or if you are organising sales promotions, you should be careful that statements and advertising or marketing meet requirements of the CAP Code and BCAP Code for broadcasting, where relevant. These Codes are enforced by the Advertising Standards Authority (ASA) and are quite detailed. In relation to advertising in other jurisdictions, there are a number of regimes to consider, with particular nuances in different jurisdictions. General principles applying to most jurisdictions are: • advertising should not mislead consumers or make claims that cannot be substantiated; • stricter rules tend to apply to advertising to minors; • there are often restrictions on "obscene" or potentially offensive advertising, although the detail of how these restrictions apply in practice will vary significantly between jurisdictions; and • sector-specific rules apply, particularly in relation to financial services, and products which may affect health such as tobacco, alcohol, foods and cosmetics.

Other matters	
Use of "unreasonable" terms in business-to-business contracts	The Unfair Contract Terms Act 1977 (UCTA) regulates business-to-business contracts. UCTA does not apply to international supply contracts, although similar legislation may apply in other jurisdictions. A key principle of UCTA in a business-to-business context is that certain exclusion clauses will always be ineffective or must be "reasonable". For example, a clause which (directly or indirectly) excludes or limit liability for death or personal injury caused by negligence of a party is prohibited under UCTA. If a clause excludes these types of losses such clause will not be enforceable. There are also a number of provisions that a court may hold void in business-to-business contracts if they are "unreasonable" (applying a legal test for "reasonableness" as set out in UCTA). Such provisions include liability for: (i) other types of losses caused by negligence and/or misrepresentation; or (ii) breach of certain implied terms. If a business agrees to be bound by another party's standard terms and conditions then certain terms in these terms and conditions (as set out in UCTA) may also be held to be unreasonable and unenforceable as a result.
Implied terms and conditions	In the UK contracts are to be treated as including certain terms unless expressly dis-applied. Where these terms are not implied in a contract, however, the Consumer Rights Act 2015 (CRA) (in relation to consumer contracts) and UCTA (in relation to business-to-business contracts) may render those exclusions or limitations unenforceable, depending on the terms and the extent to which their application is excluded or limited (as outlined in the section above or in "Selling to Consumers" section below). For this reason careful consideration should be given before excluding certain implied terms (although in practice, it is not rare for service providers in business-to-business contracts to exclude implied conditions and replace them with express terms). Implied terms will only be effectively dis-applied if they are expressly excluded and the relevant party is not prohibited from doing so under UCTA or, in the case of a consumer contract, the CRA. Key implied terms in a contract of sale of goods, digital content or services (as applicable) are that: • the seller has a right to sell the goods and/or digital content; • the goods and/or digital content conform with their description; • the goods and/or digital content are of satisfactory quality; • the goods and/or digital content are reasonably fit for purpose; and • the services will be provided with reasonable skill and care.

Other matters	
Accessibility	UK equality legislation imposes a duty on service providers to make "reasonable adjustments" to enable disabled users (such as those who are visually impaired or hard of hearing) to access their services.
Consumer protection law	There is an extensive body of consumer protection law in the UK. Some key principles are set out below, however this is not an exhaustive list of legal risks and considerations. The primary impacts of consumer protection law are that certain terms set out in a consumer contract may not be binding on consumers and certain terms are implied into contracts and cannot be agreed otherwise. If you are providing products, services and/or digital content to consumers, you should be mindful of consumer protection legislation and ensure that your terms and conditions and your commercial practices (which include advertising and marketing) are fair, reasonable and not misleading. A seller may be held criminally liable for misleading or aggressive sales practices and could also be liable for statutory civil remedies. A practice may be "misleading" if for example it omits or hides material information or contains false information in relation to any material information so as to cause the average consumer to take a transactional decision that they would not otherwise have made
Selling to Consumers	When selling goods, services and/or digital content (including distance sales, in-store and off-premises) to consumers, businesses are often required to provide certain information to consumers before they are bound by the contracts (such as the name of the business, registered address, telephone number, and the main characteristic of the product supplied). Different information requirements apply depending on the way in which the product is sold and the type of product. The CRA applies to supply of goods, services and digital content to consumers and "unfair" terms in: (i) consumer contracts; and (ii) notices given to consumers. In particular, the CRA provides that: • certain terms that are implied into a consumer contract (as described in the "Implied terms and conditions" section below); • liability for death or injury caused by a trader's negligence can never be excluded or limited in a consumer contract; • terms in a consumer contract must not be unfair (applying a "fairness" test set out in the CRA and determined by taking into account (i) all the circumstances surrounding the conclusion of the contract when the term was agreed; (ii) the nature of the subject matter of the contract; and (iii) all the other terms of the relevant contracts). However, this test does not apply to the terms which define (i) the subject matter of the contract (for example the service description) or (ii) the charges, as long as such terms are both "transparent" and "prominent" (i.e. clear and drawn to the attention of consumers); • any term which is "unfair" is not binding on the consumer; and • any written term in the consumer contract and notice is in plain and intelligible language.

Other matters	
Selling to Consumers (continued)	Onerous terms will need to be brought to the attention of the consumer in a more obvious way, or they may not apply. If the price and the main subject matter of the contract are not transparent and prominent, they will also be assessed for fairness. It is therefore important for the contract to be written in plain language and not to hide key terms in "small print" and to draw the consumer's attention to any particularly onerous terms.
Guarantees	While guarantees are not compulsory, consumer guarantees take effect as a contractual obligation when the goods are delivered, so a consumer may take legal action if the seller does not act in accordance with the terms of the guarantee. If they are given to a UK consumer then they must be written in plain, intelligible English and give all the necessary information to make a claim under the guarantee. They must also state that the consumer has statutory rights in relation to the goods being sold or supplied, and that those rights are not affected by the guarantee.
Distance and off-premises sale to consumers	In the case of distance contracts (such as consumer contracts entered into over internet and telephone) and off-premises contracts (such as sale at the consumer's home), consumers have the right to cancel unless one of the exemptions apply. Where the consumer has the cancellation right, companies must inform consumers that they have a right to cancel and withdraw from the contract up to 14 calendar days starting from the day they entered into the contract. If the trader fails to provide the relevant information, the cancellation period can be extended up to 12 months. It is worth noting that, in the case of distance contracts, companies must not start providing services unless: • the consumer has given express consent to start the supply of content; and • the consumer has acknowledged the loss of the right to cancel as a result. There are statutory requirements around reimbursement and return of goods if the consumer exercises the cancellation right. For example, if companies want consumers to bear the postage cost of returning any cancelled goods, this must be communicated before consumers are contractually bound. In the case of distance contracts, companies must obtain the express consent of consumers for any payments (e.g. by using a "pay now" button), to make it clear that a binding obligation will arise if an order is placed. There are also requirements to provide information relating to out-of-court dispute settlement. Whether a trader agrees to any out-of-court complaint and redress mechanism and if so how to access it must be included in a distance or off-premises contract. A trader established in the EU and selling online must also include a link to the EU online dispute resolution platform on their website.

Tax checklist

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.

The taxes summarised below are grouped into those imposed on the company, and then those imposed on individuals. The interests of the company may not always fully align with yours as founding shareholder, or officer or employee. Individuals should always take their own independent tax advice taking into account their personal circumstances.

New companies	
Tell HMRC your company is 'active' for corporation tax	You must tell HMRC within 3 months of starting a business activity that your company is 'active' for corporation tax. The easiest way to register your company for corporation tax is by using HMRC's online registration service. For further information see: https://www.gov.uk/topic/business-tax/corporation-tax
File Company Tax Returns annually	Company Tax Returns (Form CT600) are due annually and must be filed with HMRC by no later than 12 months after the end of each accounting period. The return must also be accompanied by the profit and loss account, the balance sheet and the tax computations showing how entries on the return have been calculated. You must keep adequate business and accounting records to file a return and calculate the amount of corporation tax due. The amount of corporation tax that a company must pay is normally payable 9 months and 1 day after the end of a company's accounting period (unless its taxable profits exceed a certain threshold in which case it must pay in instalments). For further information see: www.hmrc.gov.uk/ct https://www.gov.uk/company-tax-returns
Register your company for Pay as you earn ("PAYE")	Your company must operate the PAYE system in respect of remuneration paid to employees (but not self-employed individuals) by deducting the appropriate amount of income tax, and national insurance contributions ("NICs"), from such remuneration. Directors of your company may be employees for tax purposes, but even if not, they are officers, and in either case subject to PAYE. UK based employees are generally subject to UK income tax and NICs on their earnings, but will pay no tax on the first slice of income up to the personal allowance (which begins to be tapered downwards on earnings above a certain level). Income tax is applied at differing marginal rates, depending on the nature of the income and in which part of the UK the individual lives. For further information see: www.hmrc.gov.uk/payerti/getting-started www.hmrc.gov.uk/payerti https://www.gov.uk/income-tax-rates

New companies	
Register your company for National Insurance Contributions ("NICs")	As an employer, your company will be responsible for calculating and paying to HMRC your employees' Class 1 NICs (deducted under the PAYE system), together with employer Class 1 contributions and Class 1A or Class 1B contributions in respect of any benefits provided to such employees. NICs are calculated based on the relevant earnings of the employees, with different percentage rates for different bandings and subject to caps. For further information see: www.hmrc.gov.uk/ni
Register your company for VAT if the annual turnover of the company is over a certain threshold and submit a VAT return	The company will generally be charged VAT (which is its "input tax") on the purchase price of goods and services supplied to it by UK VAT registered suppliers and on imports of goods and services into the UK (unless those types of goods or services are specifically exempt or zero-rated). Once the value of taxable supplies made by the (here, UK established) company over a 12 month period exceed the registration threshold, or there are reasonable grounds for concluding its taxable supplies in next 30 days will do so, the company is required to register for UK VAT, and must itself charge UK VAT at the applicable rate (which is its "output tax") on supplies it makes to its customers. If the company imports services, a "reverse charge" rule may apply to treat the company (rather than the supplier) as having made the supplies of services to itself (which could trigger a registration obligation, if not registered already, and require the company to account for the output tax, and then treat the same amount as input tax). The company will not be able to claim a credit for its input tax if it does not have a valid VAT invoice from the supplier and/or is not VAT registered. Accordingly, if the company is not yet required to VAT register, it may nevertheless be worth voluntarily registering. The company may also be denied recovery of input tax if it makes VAT exempt supplies. The company would be required to submit VAT returns to HMRC periodically, usually each quarter, reporting its output tax and input tax and other information for that period and either paying HMRC the excess of your output tax over your input tax or conversely claiming a refund of surplus input tax. For further information see: www.hmrc.gov.uk/vat https://www.gov.uk/vat-rates

Individuals	
Self-Assessment	If you are a company director, you will usually need to complete a Self-Assessment Tax Return (Form SA100) to tell HMRC about your own personal income and expenses after the tax year ends on 5 April each year. You can do this online or by way of a paper form. If you are filing the paper form this needs to be with HMRC by 31 October. If you are filing online, the return needs to be filed with HMRC by the following 31 January. For further information see: www.hmrc.gov.uk/sa
NICs	If you are self-employed you must compute and account to HMRC for Class 2 NICs yourself. Class 2 NICs are a fixed amount per week. Class 4 NICs may also apply once your profits reach a certain limit and are calculated as a percentage of your annual business profit. For further information see: www.hmrc.gov.uk/ni

Equity investment	
Tax considerations for manager- shareholders	If you are a director or employee holding or acquiring shares, there are a number of tax considerations to be aware of: • income tax arises where shares are purchased for less than market value and this can apply even where the original founder shareholders acquire additional shares; • anti-avoidance provisions can also trigger tax charges, for example, where shares are converted or rights attaching to shares are varied so as to move value from one class of share to another; • business asset disposal relief reduces (potentially significantly) the main rate of capital gains tax on disposal of shares in trading companies, but certain conditions must be satisfied. For further information see: https://www.gov.uk/business-asset-disposal-relief
Equity Incentives	Equity incentives are an ideal way for start-up companies to incentivise employees as they involve no cash cost to the company and are generally very flexible in terms of rewarding performance and achievement of growth. Start-up technology companies are often ideally placed to take advantage of the most tax efficient arrangements such as enterprise management incentive ("EMI") options.
Section 431 Election	If you are both (a) a company director or employee and (b) shareholder in the company, you may wish to make a "section 431 election" in respect of your shares. This is a joint election between the company (as employer) and you (as employee) that must be made within 14 days of you acquiring shares in the company. The effect of the election is to avoid certain employment tax charges that may otherwise apply in the future under what are called the "restricted securities" rules, though employment tax charges arise on the acquisition to the extent you pay less than full market value for your shares (ignoring restrictions such as good and bad leaver provisions). For further information see: https://www.gov.uk/hmrc-internal-manuals/employment-related-securities/ersm30450
Employment Related Securities ("ERS") – Obligation to notify HMRC	If your company issues shares or grants options to directors or employees in connection with their employment or position as a director, your company will be required to notify HMRC of that fact. Your company will need to file annual returns in relation to reportable events electronically via the ERS Online Service. The electronic filing must be made with HMRC before 7 July following the tax year in which the reportable event occurred. For further information see: https://www.gov.uk/guidance/tell-hmrc-about-your-employment-related-securities https://www.gov.uk/government/publications/other-employment-related-securities-schemes-and-arrangements-end-of-year-return-template

Employment checklist

Employment checklist

The employment law checklist is designed to cover some of the initial considerations that relate to employment law and a start-up business. It is not exhaustive, but rather an indication of some initial points to consider. It is recommended that legal advice is taken prior to commencing a recruitment process.

You can also find further information on the Government's website at:

- https://www.gov.uk/browse/employing-people

New companies	
Tax	
Register your company for Pay as you earn ("PAYE")	Your company will be an employer of its directors, as well as any other employees (but not self-employed individuals), and therefore it must operate the PAYE system by deducting the appropriate amount of income tax, and national insurance contributions ("NICs"), from their pay. Once registered for PAYE, HMRC will notify your company, as employer, of the "tax code" which applies to each employee which specifies how much tax to deduct. UK based employees are generally subject to UK income tax and NICs on their earnings, but will pay no tax on the first slice of income up to the personal allowance (which begins to be tapered downwards on earnings above a certain level). Income tax is applied at differing marginal rates, depending on the nature of the income and in which part of the UK the individual lives. For further information see: www.hmrc.gov.uk/payerti/getting-started www.hmrc.gov.uk/payerti
Register your company for National Insurance Contributions	As an employer, your company will be responsible for calculating and paying to HMRC your employees' Class 1 NICs (deducted under the PAYE system), together with employer Class 1 contributions and Class 1A or Class 1B contributions in respect of any benefits provided to such employees. NICs are calculated based on the relevant earnings of the employees, with different percentage rates for different bandings and subject to caps. For further information see: www.hmrc.gov.uk/ni
Employment-Related Securities – obligation to notify HMRC	If your company issues shares or grants options to directors or employees in connection with their employment, your company (as employer) will be required to notify HMRC of that fact. Your company will need to file annual returns in relation to reportable events electronically via the ERS Online Service. The electronic filing must be made with HMRC before 7 July following the tax year in which the reportable event occurred. For further information see: https://www.gov.uk/guidance/tell-hmrc-about-your-employment-related-securities https://www.gov.uk/government/publications/other-employment-related-securities-schemes-and-arrangements-end-of-year-return-template

New companies	
Recruitment	
Job advertisements	Advertisements for vacancies must not be discriminatory. This includes indirectly discriminatory criteria, such as a requirement to work full-time or to have a certain length of service, unless this is an occupational requirement, or capable of objective justification.
Data protection	All personal data relating to job applicants obtained during the recruitment process must be processed and retained in accordance with the General Data Protection Regulation (GDPR) and the Data Protection Act. A privacy notice should be provided to prospective candidates which sets out the personal data which the employer will be processing in connection with their recruitment, the reasons that this is required, the safeguards in place to protect their personal data and its position on the retention of that data. Please let us know if you require assistance with this.
Reasonable adjustments	Reasonable adjustments may need to be made to the application and interview process for those applicants with disabilities, such as providing documentation in an accessible format (e.g. Braille, large print, audio). After recruitment, employers must continue to make reasonable adjustments to make sure disabled workers (including contract workers, trainees, apprentices and business partners) aren't seriously disadvantaged when doing their jobs.
Pre-employment health questions	Employers must not ask an applicant questions about their health, other than for prescribed reasons, including whether the individual will be able to carry out a function that is intrinsic to the work concerned, or whether reasonable adjustments need to be made to the recruitment process.
Pensions: automatic enrolment	Employers who employ at least one person must put certain staff into a pension scheme and contribute towards it. This is called 'automatic enrolment'. Furtherdetails are available on the Pensions Regulator's website via the following link: http://www.thepensionsregulator.gov.uk/en/employers
Immigration checks	Employers will need to carry out certain checks to ensure the individual has permission to work in the UK, before an individual commences employment, and keep a record of the checks it has carried out. Details of the checks are set out here: https://www.gov.uk/government/publications/right-to-work-checks-employers-guide It is a criminal offence to knowingly employ an individual who does not have permission to undertake the work for which they are employed and it is a civil offence to negligently do so.

New companies	
Recruitment	
Background checks	Many employers will wish to carry out background checks, for example, in relation to criminal convictions or links to animal rights activists. You should confirm whether your business operates in a regulated or unregulated sector before deciding on the extent to which background checks are permitted under data privacy law for prospective employees. Further detail is available at: https://www.gov.uk/find-out-dbs-check
Terms and conditions of employment	
Contracts of employment	An offer letter/contract of employment must be issued to an employee within two months of commencing employment and contain specified written particulars required under section 1 of the Employment Rights Act 1996.
Staff handbook	A staff handbook contains policies and procedures relevant to employees, such as disciplinary, grievance and absence management policies. A staff handbook ensures that employees are aware of the company's expectations and provides guidance to manages on how such matters should be handled in practice. Employees will often appreciate clear procedures, setting out the company's requirements and step-by-step processes.
Probationary periods	The purpose of a probationary period is to provide a suitable amount of time in which the company can assess the employee. Therefore, in all but the most senior appointments or very short-term contracts, a probationary period is advisable for any employee. The length of probation is likely to depend on the nature of the job and how long it will take the employer to assess performance for the purposes of confirming continued employment.
National Minimum Wage	All workers are entitled to the National Living Wage/National Minimum Wage. The level of pay depends upon age and whether they are an apprentice. Further details are available at: https://www.gov.uk/national-minimum-wage-rates

New companies	
Terms and conditions of employment	
Employer protections	The company should consider what protection should be included in contracts of employment. For example, in the technology and life sciences sectors, if the role involves the creation of intellectual property, the company would certainly need to include detailed provisions to ensure that all IP belongs to the company and not the individual. Post-termination restrictions should also be included where necessary to protect the company's interests. For example, many companies within the technology and life sciences sectors may wish to prevent an employee with access to confidential information/trade secrets from working for a competitor within a certain area for a period of time after the termination of employment. Confidentiality obligations will also need to be included in respect of nondisclosure both during employment and post-termination. The definition of confidential information must be specific enough to include any information and trade secrets about which the company is particularly concerned.
Group restructures	
TUPE considerations	
Probationary periods	The Transfer of Undertaking (Protection of Employees) Regulations ("TUPE") may apply to restructures within group companies. For example, an intra-group re-organisation may involve an asset purchase. The transfer of a business within a group can constitute a transfer of an undertaking for the purposes of TUPE in the same way as a transfer between two unconnected parties. This means that employees would automatically transfer on their existing terms and conditions. If a new company is set up as part of a group restructure, this may also give rise to a TUPE transfer where an activity previously carried out by a parent company or an existing subsidiary will subsequently be carried out by the new company. In such circumstances, employees may automatically transfer to the new company. The TUPE Regulations require transferring employees to be employed on the same terms and conditions post-transfer. The transferor and transferee must consult with employees about specific issues relating to the transfer in advance of the transfer taking place. It is highly recommended that legal advice is taken prior to any intra-group reorganisation taking place.

Raising equity finance

Raising equity finance

A guide to the UK regulatory framework

A key source of financing for start-up companies is by way of equity financing. This often takes the form of personal investment or investment by third parties (including friends and family, professional investors and/ or alternative sources such as crowdfunding).

When an investor acquires shares in a start-up company, there is a risk that the investor may lose his entire investment if the company is not successful. Shares in private limited companies are also illiquid assets and difficult to value. It is for this reason that the UK legislative regime has developed to protect investors and to restrict a company's ability to induce investors to invest in a company.

This note provides an overview of the relevant UK legislation to be considered by start-ups (though it should not be viewed as legal advice). It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this note. This checklist is also by no means exhaustive.
If you have any queries or concerns in relation to the UK regulatory framework, we recommend that you seek legal advice before taking any further action.

This information 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 posted; however, the law may have changed since that date. This 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 on the basis of this information.

<table>
<tr><th colspan="2">Offers to the public</th></tr>
<tr><td>General Prohibition on limited companies making offers to the public</td><td>Pursuant to section 755 of the Companies Act 2006 (“CA 2006”), a private limited company must not offer shares of the company to the public. Under the CA 2006, an offer is not regarded as an offer to the public if it can properly be regarded in all the circumstances as:
• not being calculated to result, directly or indirectly, in the shares of the company becoming available to persons other than those receiving the offer; or
• otherwise being a private matter between the company and the recipient of the offer (this is often the case when an offer is made to a person who has a connection with the company or one of its founders (which includes existing members and employees of the company and their family).</td></tr>
<tr><td>Requirement to prepare a prospectus</td><td>Pursuant to section 85 of the Financial Services and Markets Act 2000 (“FSMA”), it is unlawful for a company to offer transferable securities (i.e. shares) to the public unless a prospectus, approved by the Financial Conduct Authority has been prepared. Breach of section 85 is a criminal offence.
Under FSMA, there is an offer of transferable securities to the public if there is a communication to any person, by any means, which presents sufficient information on the transferable securities to be offered and the terms on which they are to be offered to enable an investor to decide to buy or subscribe for the securities in question. The communication can be in any form and by any means.
There are a number of exemptions commonly used by start-up companies seeking equity financing:
• the offer is made to or directed at qualified investors only (e.g. venture capitalists and business angels and other persons regulated by the FCA);
• the offer is made to or directed at fewer than 150 natural or legal persons in the United Kingdom, other than qualified investors;
• the offer has a denomination per unit which amounts to at least EUR100,000;
• the offer of securities is addressed to investors who acquire securities for a total consideration of at least EUR100,000 per investor, for each separate offer; and
• the total amount being raised from investors in the UK is less than EUR8,000,000 (calculated over a period of 12 months).
If you are seeking equity financing outside of the UK, please do consider any other relevant regulatory restrictions which may apply – you may need to seek local law advice.</td></tr>
</table>

Offers to the public	
General Guidance	Before any offer is made by a start-up company, the scope and extent of the offering should be assessed to ensure that these restrictions are not triggered. Ideally any offer should be targeted only at specific individuals (whether it be professional investors or friends and family) rather than the general public.
Financial promotion	
Ensure that your company is the registered proprietor of any of its registered IP	Even if the shares can be offered without the need to issue a prospectus (see above), this does not mean that the offer will fall outside the scope of all regulatory requirements. Specifically, the financial promotion regime contained in FSMA needs to be considered. Under Section 21 of FSMA, any communication which invites or induces a person to engage in investment activity is a financial promotion and, unless the **person is an authorised firm**, or the communication is **exempt** or **approved by a FCA or PRA registered firm**, it is a criminal offence to make such a communication and any agreement entered into in breach of this provision is unenforceable as against the other person entering into it. The provision of a business plan, an executive summary of the company and its business and/ or any other materials provided by a company or a founder to elicit investment is likely to be classified as a financial promotion. The person must invite/ induce engagement in an investment activity ("controlled activities" which require authorisation from the FCA or PRA). Selling shares, including investment based crowd-funding, are considered to be investment activities. The prohibition under s. 21 FSMA will apply regardless of the amount of investment sought from investors. A communication can count as a financial promotion whether it was solicited and in real time or not. Becoming an authorised firm or obtaining approval by a FCA or PRA registered firm (such as an investment bank or an IFA) is not likely to be feasible for a start-up as it may be expensive and impractical. A common approach taken by start-ups seeking investment is to rely on the statutory exemptions set out in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ("**FPO**"), as described below. Given that non-compliance is a criminal offence, any person making a financial promotion should ensure that such communication does fall within a particular exemption before it is relied upon and the communication made. If you are in any doubt, legal advice should be sought before making any communication.

Financial promotion	
Terminology	FSMA and the FPO contains a number of key terms that are relevant when determining whether an exemption applies. A communication is: • “made to” a person if it is addressed to a particular person (e.g, where it is contained in a telephone call or letter); • “directed at “ another person if it is addressed to persons generally (for example, where it is contained in a television broadcast or website); • “real time” if it is made in the course of a personal visit, telephone conversation or other interactive dialogue. All other types of communication are “non-real time” communications (e.g. letters and other forms of correspondence); and • “solicited” if it was initiated by the recipient or takes place in response to an express request from the recipient. All other communications are regarded as unsolicited.
Disclaimers	It is advisable for any communications to include a disclaimer on the front page to the effect that it is only communicated to a specific class of recipient falling within one of the exemptions (and a disclaimer is mandatory in order to fall within certain FPO exemptions). Whilst the communication still needs to fall within the scope of an exemption, the disclaimer may assist in establishing that the terms of the financial promotion regime have been complied with. It should also be stated that any recipients who do not fall within that specific class should return the document to the sender.
Exemption: Investment Professionals	Any communication made to investment professionals or which may reasonably be regarded as directed to investment professionals will not require approval. In order to rely on this exemption, the relevant communication must: • be made only to recipients whom the person making the communication believes on reasonable grounds to be investment professionals; or • be reasonably regarded as directed only at such recipients. An investment professional includes (but is not limited to) a person who is authorised for the purpose of FSMA, a person whose ordinary activities involve him carrying on certain investment-related activities, a government, local authority or an international organisation and certain directors, officers or employees of any of the same. To benefit from this exemption, any communications need to make it clear to whom such communication is directed and that other persons should not act on it. Part 1 of Annex 1 sets out an example form of disclaimer to be included in any communications seeking to rely on the investment professional exemption. Part 2 of Annex 1 sets out a form of confirmation to be signed by the relevant investment professional. Although this confirmation is not required by article 19 of the FPO, it may be prudent to require it.

Financial promotion	
Exemption: **High Net Worth Individuals (Business Angels)**	Any communication made to certified high net worth individuals will not require approval. In order to rely on this exemption, the relevant communication must: • be a non-real time or a solicited real time communication; • be made to an individual whom the person making the communication believes on reasonable grounds to be a certified high net worth individual; • be accompanied by a warning in the prescribed form set out in part 1A of Annex 2 and which complies with the requirements set out in part 1B of Annex 2 of this summary; and • contains certain "indications" (see Part 2 of Annex 2 for an appropriate form of wording). A certified high net worth individual means a person who has signed, within the period of 12 months ending with the day on which the communication is made, a statement in the terms set out in Part 3 of Annex 2 of this summary (i.e. that they have an annual income of at least GBP100,000 or had net assets, excluding their main home, life insurance and any pension funds in excess of GBP250,000. A person would have reasonable grounds to believe that a person falls into this exemption if they had sight of the relevant certificate(s) before making the communication.
Exemption: **Self Certified Sophisticated Investors**	Any communication made to a person whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor will not require approval. In order to rely on this exemption, the relevant communication must: • be made to an individual whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor; and • be accompanied by a warning in the form set out in part 1A of Annex 3 and which complies with the requirements of part 1B of Annex 3. A self-certified sophisticated investor would include an individual who has a current certificate in the form set out in part 2 of Annex 3. A certificate is current if it is signed and dated not more than 12 months before the date on which the communication is made. A person would have reasonable grounds to believe that a person falls into this exemption if they had sight of the relevant certificate(s) before making the communication.
Exemption: **Association of High Net Worth Individuals (Business Angels)**	Another potentially useful exemption relates to communications made to business angels. This permits non-real time or solicited real time communications being made to associations or members of associations made up of persons who are certified high net worth individuals, high net worth companies, unincorporated associations or partnerships, trustees of high value trusts or certified or self-certified investors.

Financial promotion	
Exemption: One off communications	There is an exemption for one-off non-real time or solicited real time communications which are made rather than directed at persons which applies if the communication meets one or more of the following three conditions: • the communication is made only to one recipient or only to a group of recipients in the expectation that they would engage in any investment activity jointly (such as family members); • the product or service which is the subject of the communication has been determined with regard to the particular circumstances of the recipient; and • the communication is not part of an organised marketing campaign. Even if a communication does not satisfy all of the conditions above, it may still be regarded as a one-off communication. Guidance suggests that there are two essential elements for a one-off communication being that it must be tailored to the circumstances of the recipient(s) and it is individual in nature and not simply a personalised letter sent out as part of a general mail shot. There is an additional exemption for one-off unsolicited real time communications where, in addition to the three conditions noted above, the communicator believes on reasonable grounds that the recipient understands the risks involved in engaging in the activity being promoted and expects to receive the communication in relation to the relevant investment activity. It will be difficult to be sure that these further conditions are satisfied so it may be desirable to obtain formal consent to real time communications wherever possible. The exemptions for one-off communications are subjective in nature and a company/founder should therefore only seek to rely on these exemptions when absolute necessary and on the basis that the company/founder has complete confidence that the conditions are met. If there is any doubt, reliance on these exemptions should be avoided and/or formal legal advice should be sought.

Liability for misleading statements	
Liability for Misleading Statements	It should be noted that, in addition to the requirements set out above, liability for misleading statements can arise under English law in several ways.
Financial Services Act 2012	A criminal offence may be committed under section 89 of the Financial Services Act 2012 ("FSA") if false or misleading information is published which may induce another person to buy or refrain from buying the shares. This applies regardless of whether the prospectus requirements (referred to above) apply. Under FSA, the offence may be committed even where a person did not intend to publish false or misleading information or to influence a person's investment decision. The offence can also be committed if material facts are dishonestly concealed. If Section 89 is contravened a person may be liable to a maximum of seven years' imprisonment or to a fine or both.

Liability for misleading statements	
Breach of Contact	If an investor can demonstrate that he bought shares in reliance on a false or misleading pre-contractual representation for which the company is responsible he may be able to bring a claim against the company under the law of misrepresentation unless liability is clearly and properly included. The proforma subscription and shareholders' agreement provided in this start-up pack excludes liability for any pre-contracted representations made.
Misstatement	Where a person relies on a misstatement of fact made by the company or any of its directors to buy shares and suffers a loss as a result of the misstatement, and such misstatement was negligently made, a civil action for negligence may arise to recover damages for such loss. Civil liabilities may also arise in respect of a fraudulent statement of fact or under the law of deceit. The proforma subscription and shareholders' agreement provided in this start-up pack expressly excludes liability for such claims.

Annex 1: Investment professionals

Part 1: Example Disclaimer

This [*insert name of document*] is being sent only to investment professionals (as that term is defined in article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ("FPO")) or to persons to whom it would otherwise be lawful to distribute it. Accordingly, persons who do not have professional experience in matters relating to investments should not rely on this [*insert name of document*.

The shares in [insert company name] will only be available to an investment professional (as defined above) or a person who has provided written confirmation to the effect that he is an investment professional within the meaning of article 19 of the FPO.

Part 2: Suggested form of confirmation to be obtained from investment professionals

To **[insert name of communicator]**:

[INSERT DESCRIPTION OF TRANSACTION/COMPANY NAME]

[I][We] confirm that [I am][we are][is] an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 [, on the basis that [I am][we are] [is] [a person authorised for the purposes of the Financial Services and Markets Act 2000] [an exempt person for the purposes of the Financial Services and Markets Act 2000]

[a government, local authority or international organisation person for the purposes of the Financial Services and Markets Act 2000] [a director, officer of employee of a [person authorised][exempt person] [government, local authority or international organisation]]*.

[For and on behalf of] [*name of company/firm/person*]

**Note: please delete as appropriate. These are only the most common examples of an investment professional. If you are in any doubt, please seek legal advice.*

Annex 2: Certified high net worth individuals

Part 1A: Prescribed form of warning

IMPORTANT NOTE

Ensure that the paragraph below is included in **bold** type, has a **black border** and complies with the remainder of the requirements set out in part 1B of Annex 2.

The content of [this promotion*] has not been approved by an authorised person within the meaning of the Financial Services and Markets Act 2000. Reliance on [this promotion*] for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested.

**Note: if the warning is sent to the recipient after the communication has been made the words "this promotion" must be substituted by wording which clearly identifies the promotion which is the subject of the warning.*

Part 1B: Prescribed requirements of the warning set out in part 1A

The warning must:

1. be given at the beginning of the communication;
2. precede any other written or pictorial matter;
3. be in a font size consistent with the text forming the remainder of the communication;
4. be indelible;
5. be legible;
6. be printed in black, bold type;
7. be surrounded by a black border which does not interfere with the text of the warning; and
8. not be hidden, obscured or interrupted by any other written or pictorial matter.

Part 2: Suggested form of wording of "indications" for inclusion in the communication

[Name of recipient of the document]

[Address]

[INSERT DESCRIPTION OF TRANSACTION/COMPANY NAME]

This [insert name of document] is being sent to you on the basis that you are a certified high net worth individual (as that term is defined in article 48(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005) ("**FPO**")). Accordingly, this [**insert name of document**] is exempt from the general restriction on the communication of invitations or inducements to engage in investment activity set out in section 21 of the Financial Services and Markets Act 2000 ("**FSMA**") .

To qualify as a certified high net worth individual, you must have signed a statement (within the last 12 months) in the terms set out in part 1 of schedule 5 of the FPO.

To be certified as a high net worth individual, you must have had annual income of at least GBP100,000 for, or held net assets to the value of not less than GBP250,000 throughout, the financial year immediately preceding the date on which the certificate is signed.

If you are in any doubt about [**insert description of investment to which the document relates, eg "the shares in X Limited**"], you should consult a person authorised under the FSMA who specialises in advising on [**insert description of type of investment to which the document relates, eg "shares in private companies**"].

Annex 2:
Certified high net worth individuals

Part 3: Statement for a Certified High Net Worth Individuals

IMPORTANT NOTE

Ensure that the words shown in bold type in this prescribed form of statement are in bold type in the statement, as failure to comply with this requirement will invalidate the statement.

STATEMENT FOR CERTIFIED HIGH NET WORTH INDIVIDUAL

I declare that I am a certified high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

I understand that this means:

(a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Conduct Authority;

(b) the content of such financial promotions may not conform to rules issues by the Financial Conduct Authority;

(c) by signing this statement I may lose significant rights:

(d) I may have no right to complain to either of the following:

- (i) the Financial Conduct Authority; or
- (ii) the Financial Ombudsman Scheme;

(e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a certified high net worth individual because at **least one of the following applies**:

(a) I had, during the financial year immediately preceding the date below, an annual income to the value of GBP100,000 or more:

(b) I held, throughout the financial year immediately preceding the date below, net assets to the value of GBP250,000 or more. Net assets for these purposes do not include:

- (i) the property which is my primary residence or any loan secured on that residence;
- (ii) any rights of mine under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or
- (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled.

I accept that I can lose my property and other assets from making investment decisions based on financial promotions.

I am aware that it is open to me to seek advice from someone who specialises in advising on investments

____

Signature

____

Date

Annex 3: Self-certified sophisticated investors

Part 1A: Prescribed form of warning

IMPORTANT NOTE

Ensure that the paragraph below is included in **bold** type, has a **black border** and complies with the remainder of the requirements set out in part 1B of Annex 3..

The content of [this promotion*] has not been approved by an authorised person within the meaning of the Financial Services and Markets Act 2000. Reliance on [this promotion*] for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested.

**Note:* *if the warning is sent to the recipient after the communication has been made the words "this promotion" must be substituted by wording which clearly identifies the promotion which is the subject of the warning.*

Part 1B: Prescribed requirements of the warning set out in part 1A

IMPORTANT NOTE

The warning must:

1. be given at the beginning of the communication;
2. precede any other written or pictorial matter;
3. be in a font size consistent with the text forming the remainder of the communication;
4. be indelible;
5. be legible;
6. be printed in black, bold type;
7. be surrounded by a black border which does not interfere with the text of the warning; and
8. not be hidden, obscured or interrupted by any other written or pictorial matter.

Annex 3:
Self-certified sophisticated investors

Part 2: Statement for a Self-Certified Sophisticated Investor

IMPORTANT NOTE

Ensure that the words shown in bold type in this prescribed form of statement are in bold type in the statement, as failure to comply with this requirement will invalidate the statement.

I declare that I am a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

I understand that this means:

(a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Conduct Authority;

(b) the content of such financial promotions may not conform to rules issues by the Financial Conduct Authority;

(c) by signing this statement I may lose significant rights:

(d) I may have no right to complain to either of the following:

- (i) the Financial Conduct Authority; or
- (ii) the Financial Ombudsman Scheme;

(e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a certified sophisticated investor because at **least one of the following applies**:

(a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;

(b) I have made more than one investment in an unlisted company in the two years prior to the date below;

(c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;

(d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least GBP1 million.

I accept that I can lose my property and other assets from making investment decisions based on financial promotions.

I am aware that it is open to me to seek advice from someone who specialises in advising on investments

____

Signature

____

Date

Startup pack: Terms and conditions of use

Startup 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 UK LLP (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.

"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 Startup Pack

You should note that:

2.1 The Startup Pack is intended as a general overview of some of the key legal issues that are likely to be relevant to a startup business in England and Wales 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 Startup Pack. Accordingly, matters which you consider to be important, or which may otherwise be considered important, to your particular circumstances or business may not have been addressed in the Startup Pack, or may not have been addressed in sufficient detail for your purposes. Consequently, the Startup Pack cannot in any way act as a substitute for obtaining your own legal advice and other advice.

2.2 We have not updated the Startup Pack since 1 July 2021 to take account of any subsequent events or changes in law, and we have no duty or responsibility to do so.

3. Downloading the Startup Pack

3.1 By downloading and/or accessing and/or reviewing and/or using the Startup 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 Startup 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 Startup Pack or in respect of any information contained in or derived from the Startup Pack;

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 Startup Pack, or any information contained in or derived from the Startup Pack, or our provision of the Startup Pack to you or any other party.

4.2 You agree that you will not rely on the Startup 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 Startup Pack or any information contained in or derived from the Startup Pack.

4.3 You acknowledge and agree that by making the Startup 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 Startup Pack or any matters mentioned or information contained in it.

Startup pack: Terms and conditions of use

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 Startup Pack in accordance with paragraph 5 of these terms and conditions, to comply with these terms and conditions.

5. No distribution of the Startup Pack

5.1 Subject to paragraph 5.2, you must not copy or distribute the Startup Pack or otherwise make it available to any other person.

5.2 A copy of the Startup 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 Startup 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 Startup Pack to you.

6. Subsequent version(s) of the Startup Pack

You acknowledge and agree that, by making a copy of the Startup Pack available to you, we do not assume any duty or responsibility to provide you with any subsequent versions of the Startup 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 advisors (to whom we assume no duty or responsibility) in relation to the Startup 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 Startup Pack.

8. No lawyer/client relationship with you

Our agreement to provide a copy of the Startup 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 Startup 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 for death or personal injury caused by negligence or constitutes a limitation or exclusion of liability for our fraud or reckless disregard of professional obligations.

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 English law, and you irrevocably agree that the courts of England and Wales 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 Contracts (Rights of Third Parties) Act 1999, 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 Contracts (Rights of Third Parties) Act 1999 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.

Thank you

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This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.
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