



## STARTUP

### IMPORTANT ISSUES TO TAKE INTO ACCOUNT

*The authorship of the present text belongs to Adelaide Moura, managing partner of A.M. Moura and represents the full text of the news published in the online publication “Dinheiro Vivo” on May 8, 2014 – [link](#).*

Choose a startup as a company model doesn't “simply” requires to have an unique idea. It is necessary to be aware of the need to ensure the adoption of certain legal mechanisms, such as the formal constitution of the company, the trademark registration, the products and services that will be made available to the customers.

Therefore, the founders should obtain legal support of experienced Lawyers, especially in the following legal areas:

- Company Law (Corporate and Commercial Law);
- Contracts;
- Labour Law;
- Intellectual property;
- Real Estate (leases);
- Tax Law;
- *Franchise*.

#### Basic legal cares

##### Agreement between founders

It is essential to conclude a clear agreement among the founders of the start-up regarding the meaning and goals of the project. This will allow that development of the project without any dispute. Several problems could arise in the future if an initial agreement is not concluded between the founders. The agreement should have the form of a shareholders agreement with, at least and as an example:

- Purpose of the global business;
- Real percentage of the equity share of each founder;
- Role and responsibilities of each founder;

- Consequences of the exit of one or more than one founder;
- Minimum duration of participation in the project;
- Proportion and nature of the contribution of each founder for the development of the project.

#### Legal Form

One of the first major decisions to make is to decide the legal form in which the business will be developed. Many times the founders start a business without consulting a lawyer and often they are confronted with huge responsibilities, including tax responsibilities. Probably, in most cases, a start-up should assume the form of a limited liability company, but it should be evaluated on a case by case basis.

Another important feature that should be mentioned in this context is the commercial name of the start-up. It is necessary to confirm that there will be no problems with trademarks that are already registered by a third party, with internet domains, etc.

#### Tax Issues

**There are fundamental tax issues that should be taken into account when starting a business. For example:**

- VAT;
- IRC;
- Taxes and contributions;
- Tax incentives;
- The accountant of the company that should be chosen carefully in order to ensure that the accounting is always up-to-date and the tax and accounting treatment is properly made.



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#### Protection of intellectual property

If you have developed a product, a technology or a different service that could be considered unique there are necessary measures that should be taken to ensure the protection of intellectual property rights.

Both founders and potential investors should ensure that the company protects their one intellectual property rights and avoid infringing the intellectual property rights of third parties.

Examples of intellectual property rights protective measures:

- Registration of patents - protection for new products;
- Registration of copyrights - protection of original works, of artistic nature, books, articles, music, movies, software, etc.
- Trademarks registration – the protection of trademarks that could be formed by a single word, a name, a symbol, etc.
- Non-Disclosure Agreements in general – protects the confidential documentation shared with third parties;
- Non-Disclosure Agreements to be concluded with employees - employment agreements should foresee clauses that:
  - (i) ensure the confidentiality of the employee regarding company information during the employment agreement and after its termination;
  - (ii) ensure that any invention, idea, product or service developed by the employee during the employment agreement and related with the business belongs to the company.
- If the founders of the start-up were previously employees of a company, it is necessary to ensure that they have no obligations that limits them, particularly in the same area of competition and recruiting employees of the same company.

#### Standard recruiting

The company should formalize the relationship with customers using, whenever possible, standard contracts, subject to the necessary amendments.

As an example, some ideas for the standard contract - **make sure that:**

- The contract have the appearance of a form, used in most commercial relations concluded by the company;
- The price is clearly stated, as well as the payment conditions and the penalties – including interest, in case of late payment;
- Absence of declarations of conformity or guarantees on behalf of the company;
- The responsibility of the company shall be limited, as legally possible;
- Include a clause of non-responsibility in case of force majeure cases;
- Consider arbitration or mediation as a faster form of resolution of disputes.

#### Investors

It is very usual that the first year of a start-up is financed by an investor. The investors could deliver to the founders an amount as a financial application which could be remunerated in accordance with the success of the business.

This is way it is recommended an analysis of the financial capacity of the investor.



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The financing by a third-party, institutional or private, should be subject to a written agreement for reimbursement (as is the case of the so-called *collateral*), in which should also be set out all the conditions of remuneration.

#### Hiring employees

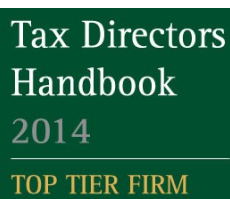
Make sure that a procedure is followed by a consistent and replicative proceeding regarding the documentation used, including internal policies, which must be made known to all who are starting to work in the company.

We recommend the use of a check-list.

#### Website

The company should have an Agreement on the Terms and Conditions of Use and the Privacy Policy for the website.

The Privacy Policy should express what is the treatment that can be done with the personal data collected of users and customers.



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